
(2014) 03 SHI CK 0088
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 226 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Kulwant Kaur and Others

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107

Motor Vehicles Act, 1988 — Section 147, 149, 149(2), 149(2)(a)(ii), 158

Citation : (2015) 2 ACC 820 : (2015) ACJ 531 : (2015) 2 AnWR 862

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.

Bench : Single Bench

Advocate : Ashwani K. Sharma, Advocates for the Appellant; R.S. Chandel, Advocates for the Respondent

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Challenge in this appeal is to the award, dated 3.10.2005, passed by the Motor Accidents Claims Tribunal, Kullu, District Kullu, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 23 of 2005, titled as Kulwant Kaur v. Jasbir Singh, whereby Rs. 3,00,000 came to be awarded as compensation in favour of the claimant along with interest at the rate of 7.5 per cent per annum from the date of the petition till its realization (hereinafter referred to as "the impugned award"), on the grounds taken in the memo of appeal. The appellant has taken a ground which, though attractive, is devoid of any force for the reason which I am going to discuss after noticing the brief facts of the case.

2. Claimant Kulwant Kaur has sought compensation for loss of her son, who became victim of motor accident, which was caused by Jasbir Singh, respondent No. 2, against the insurer and the driver without arraying the owner as a party, who also died in the said accident.

3. In order to determine the issue, I deem it proper to give a brief resume of the facts of the case.

Brief facts:

4. Claimant Kulwant Kaur has sought compensation to the tune of Rs. 10,00,000 as per break-ups given in the claim petition on the grounds taken in the memo of the claim petition. It is averred in the claim petition that driver Jasbir Singh has driven the offending vehicle, Maruti car, bearing registration No. HP 34-A 3243 rashly and negligently on 9.1.2005, at Slapar and caused the cruel accident, in which the husband and son of the claimant lost their lives.

5. The claim petition was resisted by the insurer appellant and the driver, respondent No. 2, on the grounds taken in the memo of objections.

6. The following issues were framed by the Tribunal on 5.7.2005:

"(1) Whether Sumit Pal Singh died due to rash and negligent driving of Maruti car No. HP 34-A 3243 by respondent No. 1? ...OPP

(2) If issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? ...OPP

(3) Whether respondent No. 2 was not holding valid and effective driving licence at the time of accident? ...OPR2

(4) Whether the vehicle in question was being driven in contravention of the terms and conditions of insurance policy, as alleged? ...OPR2

(5) Relief."

7. The claimant Kulwant Kaur has examined two witnesses in support of her case and also appeared in the witness-box. The driver Jasbir Singh appeared himself as a witness and the insurer appellant has examined one witness in support of its case.

8. Claims Tribunal, after examining the pleadings and scanning the evidence, came to the conclusion that the claimant has proved the case and awarded a meagre amount to the tune of Rs. 3,00,000 as compensation and saddled the insurer with the liability.

9. The appellant insurer has not questioned the findings recorded on all issues except so far as it relates to the maintainability of the claim petition. However, I deem it proper to discuss the findings returned by the Tribunal issue-wise.

Issue No. 1:

10. The claimant has proved by leading oral as well as documentary evidence that the driver Jasbir Singh has driven the offending vehicle, Maruti car, rashly and negligently on 9.1.2005 and caused the accident at Slapar, in which Inder Singh Arora, the husband of the claimant, and Sumit Pal Singh, the son of the claimant, lost their lives. There is no rebuttal to the said evidence. Accordingly, the findings returned on issue No. 1 are upheld.

11. Before I deal with issue No. 2, I deem it proper to deal with issue Nos. 3 and 4.

Issue Nos. 3 and 4:

12. Learned counsel for the appellant has not argued on these issues. However, I have gone through the findings recorded qua these issues. The insurer-appellant has failed to lead evidence to prove that the driver was not having valid and effective driving licence to drive the offending vehicle, Maruti car. Even it has failed to prove that the vehicle was being driven in contravention of the terms and conditions of the policy. Even otherwise, had the insurer appellant discharged the onus, it had further to prove that the owner has committed wilful breach.

13. My this view is fortified by the Supreme Court judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . It is apt to reproduce relevant portion of para 102 of the judgment hereinbelow:

"(iii) The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) xxx xxx xxx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under section 149(2) of the Act."

14. It is also profitable to reproduce para 8 of the latest judgment of the Apex Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, , hereinbelow:

"(8) In a claim for compensation, it is certainly open to the insurer under section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. Owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the Licensing Authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter insurance company requires the owner of the vehicle to have the licence duly verified from the Licensing Authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take any appropriate action for verification of the matter regarding the genuineness of the licence from the Licensing Authority. That is what is explained in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

15. Applying the ratio, the insurer has not discharged the onus, as is said above, to prove that the driver was not having a valid and effective driving licence to drive the offending vehicle and that the owner has committed any wilful breach. Further, there is not even an iota of evidence on the file to show that the offending vehicle was being driven in contravention of the terms and conditions of the insurance policy. Accordingly, findings returned on issue Nos. 3 and 4 are upheld.

Issue No. 2:

16. The claimant Kulwant Kaur has sought compensation in lieu of the death of her son, Sumit Pal Singh, and has not claimed compensation in lieu of death of her husband.

17. The core question is - whether the claim petition is maintainable?

18. The argument advanced by learned counsel for the appellant on this point is devoid of any force for the simple reason that the purpose of granting compensation is just to help the claimants who have lost their kith and kin and the source of their dependency.

19. The registered owner of the offending vehicle was the husband of the claimant, who too lost his life. So, the claimant was neither in a position to array him as a party because of his death nor could she array herself as a party-

respondent as the legal representative of the owner of the offending vehicle because she is the claimant.

20. The claimant, who is otherwise entitled to compensation, cannot be deprived of the compensation on the ground that the owner is not a party. As per the Motor Vehicles Rules, the registration certificate remains valid in the name of deceased owner for a period of three months.

21. The insurance policy, Exh. RX, is on the Tribunal's record, the bare perusal of which reveals that it is a "package policy" which covers the liability of third party, insured and the occupant also, thus, legal heirs can maintain the claim and are within their rights to claim compensation.

22. It is apt to reproduce the relevant portions of the insurance policy, Exh. RX, hereinbelow:

"Policy No. : 110802/31/04/01677 Private car package policy

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SECTION II-LIABILITY TO THIRD PARTIES

(1) Subject to the limits of liability as laid down in the Schedule hereto, the company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums in which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

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SECTION III-PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

The company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst in it as a co-driver, caused by violent, accidental, external and visible means which independent of any other shall within six calendar months of such injury result in:

(i) Death 100 per cent

(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye 100 per cent

(iii) Loss of one limb or sight of one eye 50 per cent

(iv) Permanent total disablement from injuries other than named above 100 per cent"

23. Madras High Court in a case titled as United India Insurance Co. Ltd. Door No. 104-A, Peramanur Main Road Salem - 7 Vs. K. Paruvatham , has held that the legal heirs of the insured can claim compensation. It is apt to reproduce paras 21, 23 and 24 of the judgment hereinbelow:

"(21) Therefore, the liability of the insurance company in a case of death or bodily injury of the owner of the vehicle depends upon the policy of the insurance.

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(23) However, section 166 deals with just compensation to a claimant who is entitled to file a claim petition for the death of the breadwinner or for the bodily injury of the claimant. Section 147 deals with requirement of policy and limits of liability. The liability of the insurance company is to the extent of indemnification of the insured against a third person. If the insured can be fastened with any liability the insurer is liable to indemnify the insured. For the death of a passenger, if covered by the policy of insurance, the insured is liable and, therefore, the insurance company is liable to indemnify the insured. In my considered view, the insured, as a person being the legal heir of the deceased, in a different capacity is entitled for the compensation under section 166 of the Act. In that event, in my considered view, the insurance company cannot escape from indemnifying the insured simply because the insured happens to be the recipient. In a simple analogy, had there been any other legal heir apart from the insured, they would maintain a claim for compensation as they are entitled to compensation. Therefore, the insured being the sole legal heir/dependant in a dual capacity is entitled to be indemnified by the insurance company and is also entitled to be a recipient of such claim.

(24) It is also pertinent to note that in a comprehensive policy of insurance if the personal accident of the owner is covered, the legal heirs of the owner can maintain a claim. On the same analogy, the owner-insured being the legal heir of the deceased passenger, who is covered under the policy, is also entitled for a just compensation under section 166 of the Act."

24. In another case titled National Insurance Co. Ltd. Vs. Krishnan and Another, , Madras High Court has held that the claimants are entitled to compensation and can claim compensation without impleading the deceased owner as a party. It is profitable to reproduce paras 12, 26 and 27 of the judgment herein:

"(12) At the outset, this court is of the view that the claim petition filed under section 166 of the Motor Vehicles Act, 1988, by the injured-claimant against himself, claiming compensation for the injuries/permanent disablement, is not maintainable. The Claims Tribunal has committed a gross mistake in ordering joint and several liability against the owner, who happened to be a claimant in this case, and appellant insurance company. The respondent, being the owner of

the vehicle, cannot be made liable to pay compensation to himself and consequently, National Insurance Co. Ltd., Tiruchengode, appellant herein, cannot be vicariously made liable to indemnify the insured. But at the same time, it has to be considered, as to whether the injured, being the owner of the vehicle, can claim compensation against the insurer without impleading him as a party in the claim petition. The said issue has been answered in a recent decision of this court in United India Insurance Co. Ltd. Door No. 104-A, Peramanur Main Road Salem - 7 Vs. K. Paruvatham , wherein, for the death of her husband, wife made a claim petition under sections 166 and 147 of the Motor Vehicles Act, 1988. At the time of accident, he was travelling in a car, which dashed against a stationary vehicle. The insurance company alone was prosecuted. Liability of the insurance company to pay compensation was disputed on the ground that being the legal heir, she has stepped into the shoes of the insured and that, therefore, placing reliance on a decision in Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , it was contended that, as per the policy, she cannot claim compensation as the legal heir of the deceased. Per contra, the respondent therein has contended that inasmuch as the policy considered in the above said reported case was a comprehensive policy, the insurance company cannot repudiate the claim. Reliance was also placed on the following decisions:

- (i) New India Assurance Co. Ltd. Vs. Kendra Devi and Others, ;
- (ii) Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, ;
- (iii) New India Assurance Co. Ltd. Vs. Meera Bai and Others, ; and
- (iv) Dhanraj Vs. New India Assurance Co. Ltd. and Another, .

(26) An owner may travel in a vehicle, either driving the vehicle or as an occupant. He has taken a policy to cover himself for the bodily injuries or death, due to an accident arising out of and use of the vehicle. The policy is to cover him in both the capacities, either as an owner of the vehicle or as a driver. Merely because, at the time of accident, he did not drive the vehicle, it cannot be contended that the contract of insurance cannot be extended to cover the owner of the vehicle. When he travels in the vehicle, not actually driving the vehicle, but as an occupant, there is no alteration in his status, as the owner of the vehicle. The performance of an act, i.e., driving the vehicle, alone is not the criteria to determine the enforceability of the contract of insurance. So long as there is a payment of additional premium for the owner-cum-driver and during the period of validity, an accident has occurred, the policy would cover the owner also, even if he was not on the wheels at the time of the accident. The expression "owner-cum-driver" cannot be split up to narrow down the enforceability of the policy to the driver only, if he is also the owner of the vehicle. When an occupant in the vehicle is covered by the judgment in National Insurance Company Ltd. Vs. Balakrishnan and Another, , then the owner of the vehicle, who travelled in the offending vehicle as an occupant, is also entitled to seek for just compensation, when the vehicle is covered by a comprehensive/

package policy. If the policy is comprehensive/package policy and when additional premium has been paid to cover any loss, then the insurance company is liable to pay compensation.

(27) An occupant in a vehicle may include all the persons, including the owner. When there are different kinds of policies, for the owner-cum-driver, employee, unnamed passengers, etc., for which different rates of premium are prescribed under the India Motor Tariff, it cannot be contended that the claim for compensation is maintainable only when the owner is on the wheels and not when he travelled in the vehicle as an occupant. In the light of the decisions stated supra, this court is of the view that the respondent is entitled to maintain a claim for compensation against the insurer alone."

25. Indirectly, the question was involved before the Supreme Court in a case titled *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, . Taking into consideration the provision contained in section 147 of the Act, the Apex Court observed in paras 8 to 10 as under:

"(8) Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

(9) In the case of *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, , it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party, the insurance company has no liability also.

(10) In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989 paid under the heading "own damage" is for covering liability towards personal injury. Under the heading "own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

26. This judgment was also considered by the Apex Court in a latest judgment titled as *New India Assurance Company Limited Vs. Prabha Devi and Others*,

27. In the said judgments, the Hon'ble Supreme Court held that if the insurance policy covers the risk of owner-insured, the claimants can maintain claim petition.

28. Applying the test to the case in hand, the claimant is the mother of the deceased, who was the son of deceased owner, was a third party/occupant, thus,

was covered by the policy and claimant was within her rights to claim compensation.

29. It is also apt to record herein that the claimant has not filed the claim petition in the capacity of claimant of the deceased husband. Thus, the argument advanced by the learned counsel for the appellant is not tenable.

30. The Supreme Court in a case titled as National Insurance Company Ltd. Vs. Balakrishnan and Another, , discussed the purpose and concept of "comprehensive policy"/"package policy" and "Act policy" and held that the "comprehensive policy"/"package policy" covers occupant of the insured vehicle, third party and the owner-insured also. It is apt to reproduce paras 21 and 22 of the judgment herein:

"(21) In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive policy/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have also reproduced the same.

(22) In view of the above said legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act policy" or "comprehensive/package policy". There has been no discussion either by the Tribunal or the High Court in this regard. True it is, before us, Annexure P1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car."

31. In this judgment, the Apex Court also discussed the guidelines/policy made by the competent authority, which was issued vide circular M.V. No. 1 of 1978. It is apt to reproduce paras 16 and 17 of the judgment herein:

"(16) Thus, it is quite vivid that the Bench had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of

the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy", regard being had to the contract of insurance.

(17) At this stage, it is apposite to note that when the decision in Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., , was rendered, a decision of the High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of "comprehensive/package policy" had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, , after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by the IRDA to the CEOs of all the insurance companies restating the factual position relating to the liability of insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the "comprehensive/package policy".

32. I deem it proper to record herein that I have already discussed this issue while dealing with a case of like nature as judge of Jammu and Kashmir High Court at Jammu titled as New India Assurance Co. Ltd. Vs. Shanti Bopanna and Others, . In that judgment, after discussing all circulars/guidelines, effect of "Act policy", "comprehensive policy" and "package policy", it has been held that the occupant is covered by the "comprehensive insurance policy".

33. I have also discussed the same issue in this High Court in a case titled as New India Assurance Company Ltd. Vs. Ritu Upadhaya, .

34. While applying the test to the instant case, one comes to an inescapable conclusion that admittedly, the vehicle is covered by the insurance policy which is "package policy", thus, covers any person including occupant and the insured-owner.

35. The accident is outcome of use of motor vehicle and the claimant mother, who has lost her son, is entitled to compensation and non-impleadment of deceased owner, who happens to be the husband of the claimant, cannot be the ground to throw her out of the court. If such contention of the insurer is accepted, that will amount to defeating the purpose, aim and object of granting of compensation and even will offend the insurance contract. It is the duty of the Tribunal to bear in mind that the granting of compensation is outcome of the welfare legislation.

36. The claimant has not questioned the adequacy of the compensation. The compensation awarded is inadequate.

37. I have examined the pleadings, particularly the claim made by the claimant mother for grant of compensation to the tune of Rs. 10,00,000 as per the breakups given in the claim petition. She has specifically stated that she has lost her husband, who was running business and the deceased son was assisting his father in the business, thus, has virtually taken the plea that the deceased was an earning hand and was earning more than Rs. 10,000 per month.

38. Admittedly, she has lost her husband and son also, which has adversely affected the business being run by her husband with the assistance of the deceased son. It has also come in the evidence that she was constrained to close down the said business. There is no rebuttal to the said evidence. I wonder why a meagre amount of Rs. 3,00,000 has been granted, which cannot be said to be just and adequate compensation in the given circumstances of the case.

39. What is just and adequate compensation is a question of fact to be determined as per the pleadings of the parties read with the evidence on record and also while exercising the guesswork.

40. Before I determine what is just and adequate compensation in the case in hand, it is also a moot question - whether the appellate court can enhance compensation, even though not prayed for by the medium of appeal or by cross-objection.

41. The Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") has gone through a sea change in the year 1994 and sub-section (6) has been added to section 158 of the M.V. Act, which reads as under:

"158. Production of certain certificates, licence and permit in certain cases.--

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(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer."

In terms of this provision, the report is to be submitted to the Tribunal having the jurisdiction.

42. Also, an amendment has been carried out in section 166 of the M.V. Act and sub-section (4) stands added. It is apt to reproduce sub-section (4) of section 166 of the M.V. Act herein:

"166. Application for compensation.--

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(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."

It mandates that a Tribunal has to treat report under section 158 (6) (supra) of the M.V. Act as a claim petition. Thus, there is no handicap or restriction in granting compensation in excess of the amount claimed by the claimant in the claim petition.

43. Keeping in view the purpose and object of the said provisions read with the mandate of section 173 of the M.V. Act, I am of the view that the appellate court is exercising the same powers, which the Tribunal is having. Also, sub-clause (2) of section 107 of the Code of Civil Procedure (hereinafter referred to as "the CPC) mandates that the appellate court is having all those powers which the trial court is having. It is apt to reproduce section 107, sub-clause (2) of the CPC herein:

"107. Powers of Appellate Court.--

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(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the code on courts of original jurisdiction in respect of suits instituted therein."

44. Thus, in the given circumstances, the Tribunal as well as the appellate court is within the jurisdiction to enhance the compensation.

45. My this view is fortified by the judgment of the Apex Court in the case of Nagappa Vs. Gurudayal Singh and Others, . It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"(7) Firstly, under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident 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, could be 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 authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as claimants are to be impleaded as respondents to the application for compensation. Other important

part of the said section is sub-section (4) which provides that "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". Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

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(9) It appears that due importance is not given to sub-section (4) of section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of section 158, as an application for compensation under this Act.

(10) Thereafter, section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be "just". There is no other limitation or restriction on its power for awarding just compensation."

46. The Apex Court in a case titled as *The APSRTC, rep. by its General Manager and Another Vs. M. Ramadevi and Others*, held that the appellate court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

47. The Supreme Court in another case titled as *Ningamma and Another Vs. United India Insurance Co. Ltd.*, , held that the court is duty-bound to award just compensation to which the claimants are entitled. It is profitable to reproduce para 25 of the judgment herein:

"(25) Undoubtedly, section 166 of the MVA deals with "just compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

48. The Apex Court in a latest judgment in a case titled as *Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service*, has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross-

appeal/objections. It is apt to reproduce para 9 of the judgment herein:

"(9) In view of the aforesaid decision of this court, we are of the view that the legal representatives of the deceased are entitled to compensation as mentioned under the various heads in the Table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this court in a catena of cases. Therefore, this court has awarded just and reasonable compensation in favour of the appellants as they filed an application claiming compensation under section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000 with interest at the rate of 7.5 per cent from the date of filing the claim petition till the date payment is made to the appellants."

49. Now, the question is - what is the adequate and just compensation to which the claimant is entitled?

50. Admittedly, the deceased was 19 years of age and was assisting his father in the business which has gone defunct and has brought the claimant on streets. She has not only lost the source of dependency, but has also lost her budding son, who was the source of help and hope for her. The death of her son has added miseries, agonies, suffering to her and has made her life virtually a hell.

51. If a person has to engage a labourer or a clerk/assistant to maintain and look after his business, the minimum amount which he/she has to pay is at least Rs. 10,000 per month. Undisputedly, the deceased was earning Rs. 10,000 per month and was a bachelor, would have been spending 1/2 for his pocket expenses and 1/2 for his mother. Thus, the claimant has suffered loss of source of dependency to the tune of Rs. 5,000 per month.

52. The age of the deceased was 19 years and that of the claimant 48 years, as was stated by her while recording her statement as PW 1. Keeping in view the age of the deceased and age of claimant, multiplier of 10 would be just and appropriate multiplier in this case. Thus, the claimant is entitled to compensation to the tune of Rs. 5,000 x 12 x 10 = Rs. 6,00,000 along with 7.5 per cent interest from the date of the claim petition till its realization.

53. The insurer appellant is directed to deposit the enhanced amount within three months before the Registry of this court. Registry to release the awarded amount in favour of the claimant strictly as per the terms and conditions contained in the impugned award.

54. The amount of compensation is enhanced and the impugned award is

modified, as indicated above.

55. The appeal is disposed of accordingly along with pending applications. Send down the records after placing copy of the judgment on record.