

(2008) 07 GUJ CK 0052

In the Gujarat High Court

Case No : First Appeal No"s. 2199 to 2204 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Rushika Amrutji Thakore and Others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Gujarat Motor Vehicles Rules, 1989 — Rule 211 , 212, 213, 215, 217

Motor Vehicles Act, 1939 — Section 92A

Motor Vehicles Act, 1988 — Section 10(2), 109, 113A, 115(1), 116

Citation : (2008) 07 GUJ CK 0052

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hasmukh Thakker, for the Appellant; V.B. Malik, for Defendant 1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Hasmukh Thakkar on behalf of the appellant United India Insurance Co. Ltd. And Mr. V.B. Malik, learned Advocate for the respondents claimants in each appeal. These First Appeals are admitted on 13.7.2006. Today, with consent of both the learned advocates, taken up for final hearing.

2. In the present First Appeals, the appellant has challenged the order passed by Motor Accident Claims Tribunal in MACP filed by the respondents claimants u/s 140 of the Motor Vehicles Act, 1988. The accident occurred on 1st October, 2004 at about 3.30 at Nava Mota sim near Garnala and police complaint was lodged against the driver at Khedbrahma Police Station. Respondents had received injury in the said accident, therefore, application was filed u/s 140 of the Motor Vehicles Act, 1988 claiming amount on No Fault Liability. Tribunal has issued notice to the appellant insurance company, driver and owner of the vehicle in question. All the three respondents filed their respective replies before the Claims Tribunal. Thereafter, the Tribunal has heard the learned advocates

appearing for the parties. Application was made for interim compensation claimed u/s 140 of the Motor Vehicles Act, 1988 based on No Fault Liability. Respondent has produced panchanama, insurance policy, RC Book of the vehicle, injury certificate and certificate of permanent disability and relevant X-Ray on record. At the time when the application was heard by the Claims Tribunal, the Insurance Company had not raised contention that against the Insurance Company, such application u/s 140 of the Motor Vehicles Act, 1988 is not maintainable. The Insurance Company has also not raised objection against having insurance policy of the vehicle in question, means, not disputed insurance policy of the vehicle in question. Therefore, the Claims Tribunal has considered relevant provisions of Section 140 of the Motor Vehicles Act, 1988 and after examining the relevant documents produced on record by the respondents, came to the conclusion that the respondents are entitled for compensation based on No Fault Liability being interim measure. Therefore, accordingly, order was passed by the Claims Tribunal against all the respondents namely driver, owner and insurance company of the vehicle in question. The Tribunal has also directed to invest 70 per cent of the said amount in Nationalized Bank in Fixed Deposit Receipt and 30% of the amount is ordered to be paid to the claimant by account payee cheque. Said order was passed by the Claims Tribunal on 23rd January, 2006. Before the Claims Tribunal, an application u/s 166 of the Motor Vehicles Act, 1988 was also filed by the claimants. The application u/s 140 of the Motor Vehicles Act, 1988 was filed vide Exh. 5 before the Claims Tribunal on 30th October, 2004. From one accident, six motor accident claims petitions were filed from MACP No. 1200 of 2004 to 1205 of 2005. Present appeals have been filed by the appellant insurance company against the order passed by the Claims Tribunal below application Exh. 5 dated 23rd January, 2006. Matter was examined by the Claims Tribunal and thereafter, reasoned order was passed after considering the documents on record not disputed by the advocate for the appellant insurance company. Appellant Insurance company had not raised any contention before the claims tribunal about the liability and had also not raised contention that such application is not maintainable against the Insurance Company. Therefore, the Claims Tribunal has decided the application u/s 140 of the Motor Vehicles Act, 1988 on the basis of the documents which are on record and granted the amount of interim compensation on the basis of No Fault Liability with a direction to the appellant insurance company to deposit the said amount before the Claims Tribunal. Thereafter, a purshis was filed by the respondents claimants before the Claims Tribunal for permission to withdraw the main Motor Accident Claim Petitions filed u/s 166 of the Motor Vehicles Act, 1988 on the ground that looking to the injury and disability received by the claimants, they are not able to get more than Rs. 25,000.00 from the insurance company and, therefore, they are not willing to proceed further with the main application u/s 166 of the Motor Vehicles Act, 1988 and, therefore, they are filing purshis for a permission to allow to withdraw the main application. This purshis was filed on 23rd January, 2006 by the respondents original claimants wherein endorsement of "Seen" was made by the advocate for the appellant insurance company before

the claims tribunal. The Claims Tribunal has permitted the claimants to withdraw the main application u/s 166 of the Motor Vehicles Act, 1988. It is necessary to note that the appellant insurance company has not objected against the withdrawal of the main application u/s 166 of the Motor Vehicles Act, 1988.

3. Learned Advocate Mr. Thakkar appearing on behalf of the appellant insurance company has raised the following contentions before this Court:

(A) That the Claims Tribunal has committed an error of law. It was submitted that had the claimant not withdrawn the application u/s 166 of the MV Act and had the claimant been successful in the application u/s 166, the amount that could have been awarded based on the medical certificate produced by the claimant would be less than Rs. 25,000.00.

(B) That the learned Tribunal failed to appreciate that the appellant did not get an opportunity to contest the claim on the ground of age, income, disability, quantum of amount on account of withdrawal of the application filed by the opponent claimant u/s 166 of the MV Act. It was submitted that while awarding compensation, normally 50 % of the disability is awarded as a whole and if the disability at the rate of 50 per cent is considered based on the medical certificate produced by the opponent claimant, the amount that could have been awarded in the application filed u/s 166 of the MV Act on being successful would be much less than Rs. 25,000.00.

(C) That the learned Tribunal failed to appreciate that the disability certificate has been issued almost after one year i.e. In the month of September, 2005 from the date of filing of the application u/s 140 of the MV Act though as per the injury certificate issued in November, 2004, the claimant was required to take rest only for four to six weeks.

4. He relied upon the decision of the Hon'ble apex court in case of Smt. Yallwwa and Others Vs. National Insurance Co. Ltd. and Another, . Relying upon the aforesaid decision of the apex court, he emphasized his submission that the application made by the claimant u/s 140 of the MV Act 1988 makes the owner liable but not the insurer per se. When a statutory liability has been imposed on the owner, same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, the insurer would not be liable therefor. Learned Advocate Mr. Thakkar submitted that when application u/s 166 of the Motor Vehicles Act, 1988 is withdrawn by the claimants, then, how such amount can be recovered from the owner if the application u/s 140 of the MV Act, 1988 is not maintainable against the insurance company. He also submitted that if the application u/s 166 is decided, then, this much amounts are not available to the claimants, meaning thereby that more than that was granted by the claims tribunal to the claimants under the No Fault Liability and, therefore, orders passed by the Claims Tribunal are erroneous and contrary to the apex court decision and, therefore, same are required to be quashed and set aside.

5. On the other hand, learned Advocate Mr. Malik appearing for the respondents claimants submitted that such contention was not at all raised by the insurance company before the claims tribunal when the applications u/s 140 of the MV Act, 1988 were decided by the claims tribunal. As per his submission, such contention has been raised by the appellant insurance company for the first time before this Court. He also submitted that the documents which were produced by the respondents have not been disputed by the insurance company, meaning thereby, that insurance policy produced by the respondent was not in dispute and not denied the liability arising from the insurance policy in respect of the vehicle in question. He also submitted that when the withdrawal purshis was filed by the respondent in the main application u/s 166 of the MV Act, 1988, at that time also, advocate for the insurance company had not raised any objection but, on the contrary, endorsement of "seen" was made on such purshis for withdrawal of application u/s 166 of the MV Act, 1988 without raising any objection and in view of that, the claims tribunal has granted permission to withdraw the main application u/s 166 of the MV Act, 1988. He submits that now the appellant insurance company is raising such a contention before this Court for the first time having objection against the withdrawal of the main application u/s 166, therefore, it is not open for the insurance company to raise such contention before this Court when same was not raised by the insurance company before the claims tribunal. Learned Advocate Mr. Malik also submitted that the application u/s 140 of the MV Act, 1988 is an independent proceeding and claimants are entitled for the amount u/s 140 of the Act irrespective of the fact whether application u/s 166 of the Motor Vehicles Act, 1988 has been filed by the claimants or not. In support of this contention, he relied upon the decision of the Division Bench of this Court in case of New India Assurance Co. Ltd. v. Babubhai Purshottambhai Harijan and Ors. reported in 2006 (1) GLH 695 and submitted that the decision of the Division Bench of this Court has been considered by the Full Bench of this Court in case of United India Insurance Co. Ltd. Vs. Kadviben Udabhai Rathwa and Another, . Therefore, he submitted that the withdrawal of application u/s 166 of the Motor Vehicles Act, 1988 has no adverse effect on the right of the respondent to claim compensation on the principles of No Fault Liability u/s 140 of the Motor Vehicles Act, 1988. He, therefore, submitted that there is no substance in the present appeals and same are liable to be dismissed.

6. I have considered the submissions made by both the learned advocates. I have also perused the order passed by the Claims Tribunal u/s 140 of the Motor Vehicles Act, 1988. I have also perused the Record and Proceedings called by this Court and referred to it and relied upon the same.

7. Looking to the Records and Proceedings of the main application, Insurance Company, driver and owner of the vehicle in question have filed separate replies before the Claims Tribunal. Respondent has produced original documents before the Claims Tribunal. Respondent has produced complaint, panchanama of the accident, injury certificate and certificate of permanent disability and copy of charge sheet filed against the driver and copy of X-Ray and insurance policy of

the vehicle in question. Said documents have not been disputed by the Insurance Company. Said documents have not been denied by the insurance company. Vehicle in question was insured with the appellant insurance company. Therefore, Insurance Company is having statutory liability for the payment u/s 140 of the Motor Vehicles Act, 1988 based on No Fault Liability. Before the Claims Tribunal, the Insurance Company has not disputed the liability because the policy was on record. Learned Advocate Mr. Thakkar has relied upon the decision of apex court as referred to above where only question examined by the apex court was, whether the order passed u/s 140 of the Motor Vehicles Act, 1988 is appealable one or not. This aspect has been discussed by the apex court in detail. The apex court in the said decision held that when a statutory liability has been imposed upon the owner the same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, the insurer would not be liable therefor. Meaning thereby, the insurance company must have to satisfy the Claims Tribunal that in terms of the insurance policy, the insurance company is not liable to make the payment to the claimant but this is not a case of the insurance company before Tribunal and before this Court. Opportunity was given by the Tribunal to the Insurance Company while issuing notice. At that time, it was open for the insurance company to plead and prove that it is not liable at all in terms of the policy of insurance. When the objections are raised by the Insurance Company in regard to its liability, the Tribunal is required to render its decision upon the issue which would attain the finality and thus, same would be an award within the meaning of Section 173 of the Motor Vehicles Act, 1988 but in this case, after receiving notice issued by the Claims Tribunal for claiming compensation by the respondents under the No Fault Liability, the Insurance Company has not pleaded and proved that it is not liable at all. It is not case of insurance company that owner has committed breach of the condition of policy. No such defence was raised and it has also not raised contention that Insurance Company is under no obligation whatsoever in terms of Section 147(2) of the Act. These facts are very much clear from the order of the Tribunal. These facts are very much clear from the order of the Claims Tribunal passed u/s 140 of the Motor Vehicles Act, 1988. Detailed reply was filed by the Insurance Company against the main application but not raised any contention while deciding the application Exh. 5 filed by the respondent claiming compensation on the basis of No Fault Liability, therefore, relevant discussion made by the apex court in the aforesaid decision in Yallwa (SMT.) and Ors. v. National Insurance Co. Ltd. and Anr. (supra) is reproduced as under:

Held:

Section 140 makes the owners of the vehicles liable but not the insurer per se, irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act, it is permissible for the insurer to raise a defence in terms of Section 149(2) of the Act. One of the defences available to the insurer is breach of conditions specified in the policy. When such a defence is raised, the Tribunal is required to go into the said question. Section

140 of the Act does not contemplate that an insurance company shall also be liable to deposit the amount while it has no obligation whatsoever in terms of Section 147(2) of the Act. (paras 10 and 11)

Determination of the liability of the insurance company stands on a different footing from that of the owner u/s 140. When a statutory liability has been imposed upon the owner the same cannot extend the liability of an insurer to indemnify the owner although in terms of the insurance policy or under the Act, the insurer would not be liable therefor. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified u/s 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying it would be open to the insurance company to plead and prove that it is not liable at all. When objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act. It is even possible for the owner of the vehicle to raise a contention that his vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act. [Paras 16, 17, 19 and 10]

There can be more than one award, particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right u/s 140 of the Act is also required to be passed u/s 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A claims tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award. [Para 18]

Further Chapter X of the Act provides for no forum for enforcement of the right u/s 140. The only forum available is in Chapter XII. The right u/s 140 can only be enforced u/s 168 as an award. The amount directed to be paid even in terms of Chapter X of the Act has as of necessity, in the event of non compliance with directions, to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. [Paras 13 and 19]

Thus an order of the Tribunal awarding compensation u/s 140 of the Act is appealable u/s 173 as it amounts to an award u/s 168.

8. In view of the observations made by the apex court, the contention raised by the learned advocate Mr. Thakkar that the application Exh. 5 u/s 140 of the Motor Vehicles Act, 1988 is not maintainable against the Insurance CO. cannot be accepted and same is, therefore, rejected as no such contention was raised by the Insurance Company before the Claims Tribunal and even apex court has also not decided accordingly but liberty was given to the insurance company to raise defence in terms of Section 149 Sub-section (2) but the insurance company has

not disputed the legal obligation in terms of Section 147(2) of the Motor Vehicles Act, 1988. This is the basic difference between two Sections as decided by the apex court in the aforesaid decision. Apex Court has made it clear that even while raising contention against the application u/s 140, the Insurance Company is entitled to raise defence in terms of Section 149(2) and to raise the contention that the company has no legal obligation whatsoever to do so in terms of Section 147(2) of the Motor Vehicles Act, 1988 but in the case on hand, before the Claims Tribunal, no such contention was raised by the Insurance Company and, therefore, according to my opinion, this decision is not helpful to the submission made by the learned advocate Mr. Thakkar because the insurance company has not disputed the legal obligation in terms of Section 147(2) of the Motor Vehicles Act, 1988 and, therefore, the Insurance Company is under legal obligation to deposit the compensation which has been granted by the Claims Tribunal u/s 140 of the Motor Vehicles Act, 1988 based on no fault liability in favour of the claimants.

9. Next contention raised by the learned advocate Mr. Thakkar is to the effect that the application u/s 166 of the Motor Vehicles Act, 1988 is also withdrawn by the respondent. No doubt, it is made clear from the record that no such objection was raised by the insurance company before the Claims Tribunal when application for withdrawal was filed by the claimants before the Claims Tribunal. Advocate for the insurance Company has not raised any objection against the said application for withdrawal but has made endorsement of "Seen" on the said application. Apart from that, in *United India Insurance Co. Ltd. Vs. Kadviben Udabhai Rathwa and Another*, Full Bench of this Court has considered this aspect that while getting interim compensation u/s 140 of the Motor Vehicles Act, 1988, is it necessary for the claimant to file application u/s 163A or 166 of the Act or not. Answer given by the Full Bench of this Court was that it is not necessary. It has been held that in absence of an application u/s 163A or 166 of the Motor Vehicles Act, 1988, application u/s 140 of the Motor Vehicles Act, 1988 being independent, is maintainable. Relevant discussion made by the Full Bench of this Court after considering the Division Bench decision as referred above reported in 2006 (1) GLH 695, made following observations in para 21 to 24:

21. The Division Bench decision (Coram: Bhawani Singh C.J. And Abhilasha Kumari J.) in *Babubhai Purshottambhai Harijan* case (supra) deals with this question extensively maintaining the view of this Court in *Mithakhan Dinakhan Notiyar*, *Mahendrabhai Kalyanjibhai*, *Munshiram* and *Maganlal Hirabhai Patel* cases (supra). It has been said that:

10. The object behind these Sections is to speed up payment of compensation on "no fault" principle. The victim(s) of accident are, under these beneficial provisions, entitled to get the minimum statutory relief expeditiously. Speed for expeditious disposal and payment of compensation is the essence. Otherwise, injustice and breach of legislative intent is the consequence. Section 140 is a piece of legislation intended to provide immediate relief to the victim(s). This

provision is clearly a departure from the usual common law principle that claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming compensation for the death or permanent disablement caused on account of the use of a motor vehicle See: Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, The claimant is required to state that death or permanent disablement has resulted from an accident arising out of the use of a motor vehicle or motor vehicles. He is not required to prove it like claim of fault liability u/s 166. Sub-section 2 of Section 141 provides that claim for compensation u/s 140 in respect of death or permanent disablement 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 other right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place. Claim for compensation u/s 140 is independent. It need not be preceded or succeeded by claim u/s 166. Nowhere, Section 140 envisages this. Therefore, claim u/s 140 can be adjudicated and compensation awarded in absence of claim u/s 166 See: Munshiram D. Anand Vs. Pravinsinh Prabhatsinh Anand Society, Navagam Gedh, Jamnagar, . Object behind the former is to pay statutory compensation by expeditious disposal thereof and following the normal procedures for disposal in the later which generally takes time for proof and establishment of respective claims and defences of parties. Finally, Section 144 should clear the mist. It gives overriding effect to this Chapter over any other provisions of this Act or any other law for the time being in force. Therefore, this provision is independent as against other provisions in the Act providing for adjudication of claims for compensation, for example, Sections 161, 166 and 163. True it may be, all these claims are lodged before the Claims Tribunal and adjudicated by it, but that should not mean following the same method of trial. Deeper analysis of Sections 140, 161, 166 and 163-A would demonstrate that the legislature provides different modes for adjudication of claims under these provisions. Claim u/s 140 is decided summarily to achieve legislative intent of expeditious disposal of such claim for the benefit of victim(s) of accident. Therefore, defences put up by opponents can be adjudicated during trial of claim u/s 166 and in the event insurance company succeeding in establishing its defences, it can recover the loss from the insured, but not from the victims since they receive compensation under the principle of "no fault liability".

Even proviso to Sub-section (1) of Section 168 provides that claim for compensation u/s 140 in respect of death or permanent disablement of any person, whether made in such application or otherwise, shall be disposed of in accordance with the provisions of Chapter-X.

Thereafter, in Paragraphs-11 and 12, it has been said that

11. There may be cases where claim is lodged u/s 140 alone. In that situation, insurance company can recover the amount from the insured. However, where

both the claims are lodged, compensation paid u/s 140 can be adjusted with compensation ultimately awarded u/s 166 and where the Claims Tribunal ultimately holds that insurer was not liable to pay compensation, it would be entitled to reimbursement from the insured. See: National Insurance Co. Ltd. Vs. Jethu Ram and Others,

12. With hereto before examination of the matter, it cannot be said that compensation awarded u/s 140 is interim compensation simply because of adjustment against compensation awarded u/s 166. Opposite view taken by Full Bench of Karnataka High Court in United India Insurance Co. Ltd. v. Immam Aminasab Nadaf and Ors. and in other decisions on similar lines, with respect, do not appeal to us in view of clear legislative intent running through provisions under Chapter-X of the Motor Vehicles Act, 1988 and Section 168.

Finally, in paragraph-14 it is said that:

14. Therefore, what we conclude is, claims under Sections 140, 161, 166, 163-A are independent of each other and tried accordingly. However, claim u/s 140 is triable summarily and expeditiously without requiring the victim to establish death or permanent disability due to any wrongful act, neglect or default or the owner of the vehicle concerned or of any other person. Compensation awarded under this provision is being awarded under "no fault liability", therefore final, claimable by the insurer from the insured. However, where claim u/s 166 is filed, adjustment of amount paid u/s 140 with amount awarded u/s 166 can be done since Court has to award "just" compensation u/s 168 of the Act and avoid unjust enrichment of the victim.

22. With a view to examining the matters further, it would be desirable to quote statement of objects and reasons prompting the legislature making provisions for payment of compensation by way of no fault liability in hit and run cases:

Statement of Objects and Reasons

There has been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent Sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be provided to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. 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. A number of suggestions have been received for amendment of the Act from the State Governments, Union territory administrations, representative organizations and other persons for making the provisions of the Act more effective. The Law Commission of India, in its Fifty-first Report on Compensation for Injuries Caused by Automobiles in Hit-and-Run Cases, has made certain suggestions with respect to hit-and-run cases. The Law Commission has also made a number of suggestions in its Eighty-fifth Report on Claims for Compensation under Chapter VIII of the Act. The examination of these suggestions would take some time. The more important of these suggestions, which require to be implemented urgently, have been identified and it is proposed to give effect to the same through the present Bill.

2. The Bill seeks to give effect to the following proposals:

(a) A new Chapter VIIA, providing for payment of compensation in certain cases of accidents without proof of fault or negligence on the part of the owner or the driver of the motor vehicle is being inserted in the Act. Under this Chapter, the owner of the vehicle involved in an accident will be liable to pay compensation of a fixed sum of Rs. 15,000/- in respect of the death of a person and a fixed sum of Rs. 7,500 in respect of permanent disablement of any person. For securing this compensation, it will not be necessary to prove any wrongful act or negligence on the part of the owner or the driver of the vehicle. Right to claim the compensation aforesaid is without prejudice to any right to claim a higher compensation on the basis of the wrongful act or negligence of the owner or the driver of the vehicle. However, the compensation payable by an owner on the basis of wrongful act or negligence on his part would be reduced by the compensation already paid by him under this Chapter. It has also been provided that the claim for compensation under the Chapter should be disposed of as expeditiously as possible. The benefit of the provisions of the Chapter would also be available in cases where compensation is claimed in respect of a motor accident under any other law, as for example the Workmen's Compensation Act, 1923. It may also be mentioned that the owner of a vehicle will have to insure himself against liability to third parties under this Chapter to the same extent as he has to insure himself against liability to third parties in cases where he is in default or negligent (vide Clauses 11, 12, 15, 16, 17, 18 and 19).

(b) A fascicle of Sections is being inserted immediately after Section 109 of the Act to provide for compensation in cases of hit-and-run motor accidents. These provisions envisage the establishment of a Solatium Fund by the Central Government for the purpose of paying compensation in cases of hit-and-run motor accidents. The Fund will consist of contributions by the General Insurance

Corporation and insurance companies carrying on general insurance business in India, contributions by the Central Government, State Governments and other sums which may be received for being credited to it from any source. Provision is being made for payment of compensation only in cases of death or grievous hurt as defined in the Indian Penal Code. The compensation payable in respect of death of a person in a hit-and-run motor accident will be a fixed sum of Rs. 5,000/- while the compensation payable in case of grievous hurt to a person is a fixed sum of Rs. 1,000. In the event of the identity of the motor vehicle involved in the accident becoming subsequently found out and compensation being recovered through the Claims Tribunal or court or other authority in respect of the death of or for grievous hurt to any person for which compensation has been paid from the Solatium Fund, the compensation paid from the Solatium Fund will have to be refunded to the Fund. The provision is also being made for the making of a scheme to provide for the authority in which the Solatium Fund shall vest, for the administration of the Solatium Fund and for all matters connected with payment of compensation from the Solatium Fund [vide Clauses 14 and 18(a)].

(c) It is proposed to make it compulsory for every person driving a motor vehicle to have his photograph affixed on his licence. Suitable provision is also being made for giving sufficient time for existing holders of driving licences to have their photographs affixed on their licences (vide Clauses 2, 3, 4, 5 and 27).

(d) It is proposed to make it compulsory for persons driving motor vehicles to keep their driving licences in their possession on all occasions while driving. This will enable speedy detection of persons driving vehicles without licences (vide Clause 10).

(e) With a view to ensuring uniformity in respect of display of figures in the registration marks of vehicles, it is being provided that such figures shall be in Arabic numerals (vide Clause 6).

(f) The power to prescribe registered laden weights and safe axle weights for transport vehicles, which is at present with the State Governments, is being transferred to the Central Government with a view to securing uniformity (vide Clause 7).

(g) The power to make rules with respect to specifications for construction, equipment and maintenance regarding length, width, height, etc., size, nature and condition of tyres of vehicles which is at present with the State Governments, is being transferred to the Central Government with a view to achieving uniformity (vide Clauses 8 and 9).

(h) With regard to third party insurance risk, the insurance liability is, at present, fixed under the Act with reference to the vehicle as a whole. This is proposed to be altered in the case of public service vehicles to provide a limit with reference to the passengers. The limit with respect to the insurers' liability to a passenger involved in an accident in a public service vehicle is being fixed at Rs. 15,000/-.

The existing limits of insurance liability in respect of goods vehicles as also damage to property are proposed to be raised (vide Clause 13).

(i) A specific offence is being provided for to cover cases of driving of motor vehicles in contravention of Sections 3 and 4 of the Act (vide Clause 21).

(j) With a view to speedy disposal of cases, provision is being made for compounding of certain offences under the Act. This provision would also apply to pending cases (vide Clause 26).

(k) The punishment by way of fine for offences under Sections 113A, 115(1), 116, 120 and 123 are proposed to be raised (vide Clauses 20 and 22 to 25).

3. The Bill seeks to achieve the above objects.

23. Chapter X deals with liability without fault in certain cases. Section 140 corresponding to Section 92-A of Motor Vehicles Act, 1939 (Chapter VII-A) provides for liability for payment of compensation without fault in cases of death or permanent disability departing from principle of fault liability. Section 140 envisages where death or permanent disablement of any person has resulted from accident arising out of motor vehicle or motor vehicles, the owner(s) shall be jointly and severally liable to pay compensation. Extent of amount payable is prescribed in Sub-section (2). Making the claim under principle of no fault liability u/s 140, claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim is made was the result of any wrongful act on the part of owner(s) of the vehicle(s) concerned or any other person. The claim cannot be defeated by reason of any wrongful act, neglect or default of the victim of accident nor shall the quantum be reduced for negligence. Sub-section (5) of Section 140 provides that in addition to the compensation awardable under Sub-section (2), owner of the vehicle shall be liable to pay compensation under any other law for the time being in force. Where compensation is claimed and awarded under such other law, it shall be reduced from compensation paid under Sub-section (2) of Section 140 or u/s 163-A. Conclusion irresistible is where compensation is not claimed under any other law, reduction/recovery does not arise. Sub-section (2) of Section 141 provides that 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 default, the claim for compensation u/s 140 shall be disposed of in the first place. Sub-section (3) of Section 148 provides that compensation paid u/s 140 shall be adjusted against the higher amount of compensation payable on the principle of fault and that if the compensation payable on the principle of fault is less than compensation payable u/s 140, the compensation under fault liability is not required to be paid. There is no provision requiring the claimant to refund the amount paid u/s 140. Section 142 defines permanent disablement while Section 144 accords overriding effect to the provisions of this Chapter notwithstanding anything contained in any

other provision of this Act or of any other law for the time being in force. This Chapter, therefore, stands apart from other Chapters and from other provisions of law for the time being in force. Therefore, it is independent, workable as such, the limitation being where compensation has also been given under any other law, compensation awarded u/s 140 is reducible provided the compensation awarded under any other law is higher and that where both claims, one u/s 140 and the other u/s 166 or u/s 163-A, are filed claim for compensation u/s 140 shall be disposed of in the first place, rightly so, because amount paid u/s 140 is reducible from the amount of compensation paid under any other provision, but there is no provision requiring filing of applications under no fault liability and under fault liability together nor there is provision against maintainability of application u/s 140 in the absence of application u/s 166. Chapter XI provides for insurance of motor vehicles against third party risks. Sub-clause (c) inhibits liability in respect of Section 140. Whose liability, obviously, the liability of the tortfeasor and the insurance company with which the vehicle is insured. Section 149 provides for duty of insurer satisfying judgements and awards against persons insured in respect of third party risks. Sub-section (2) thereof mentions the defences available to the insurance company. Explanation in Section 149 refers to Claims Tribunal constituted u/s 165 and "award" made by the Tribunal u/s 168. Section 161 provides for compensation in cases of hit and run motor accidents, names contributors, framing of scheme (under Section 163) and payment to victims to the extent stated in Sub-section (3). Section 162 provides for refund of this compensation to the extent and in the circumstances stated. Section 163-A provides for payment of compensation on structured formula basis. Sub-section (2) thereof is similar to Section 140(2) and provides that in any claim for compensation under Sub-section (1) of Section 163-A, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act of or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. It is noticeable that the Act provides for compensation, in no fault liability (Section 140, Chapter X), in hit and run motor accidents (Section 161 Chapter XI) and fault liability payable, on structured formula basis (Section 163-A Chapter XI) and u/s 166. For adjudication of these claims, Section 161 provides for Claims Tribunals (Chapter XI). Proviso to Sub-section (2) of Section 166 requires that where no claim for compensation u/s 140 is made, such application shall contain a separate statement to that effect immediately before the signature of the applicant. This is to meet the requirement of proviso to Sub-section (5) of Section 140 and Sub-section (2) of Section 141. Since Tribunal has to award just compensation u/s 168 and avoid unjust enrichment of the claimant, proviso to Section 168 makes it clear that where application u/s 166 makes 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 such compensation in respect of such death or permanent disablement, shall be disposed of in accordance with the provisions of Chapter X. Therefore, intention of legislature is

that claim u/s 140 is triable in accordance with the provisions of Chapter X, which is summary in nature. Such a claim requires to be disposed of as expeditiously as possible so that compensation is available to the victim as compared to long trial of claim u/s 166 r.w. Rules 211 to 229, The Gujarat Motor Vehicles Rules, 1989, and for summary procedure for paying compensation on the principle of no fault liability in Section 140 r.w. Rule 231, which fortifies the conclusion that Section 140 is independent of Section 166.

24. Having taken the bull by horns, conclusions irresistible may be summarized. Section 140 (Chapter X)) provides for fixed sum of compensation in cases of no fault liability. It is independent of Section 161 (payment of compensation in cases of hit and run motor accidents), Section 163-A (payment of compensation on structured formula basis/fault liability Chapter XI) and Section 166 (fault liability Chapter XII). Application for compensation u/s 140 is maintainable without there being application for compensation u/s 163-A or u/s 166 and disposable accordingly, and compensation awarded shall be final. But, where two applications are filed u/s 140 and 163-A or u/s 140 and u/s 166, compensation awarded u/s 140 shall be reduced from the amount of compensation awarded u/s 163-A or u/s 166 provided the compensation awarded under the latter provisions are higher, otherwise, compensation paid u/s 140 would be final. Further, where claim is preferred only u/s 140 and not any other provision, compensation awarded u/s 140 shall be final. Section 140 does not provide for interim/ad-hoc compensation because compensation paid under this Section is final. "Interim/ad-hoc compensation" is used when apart from application u/s 140 there is also application u/s 163-A or u/s 166, since the amount of compensation paid u/s 140 is made deductible. Where in addition to application for compensation u/s 140 there is application under other provisions on principle of fault liability, application u/s 140 shall be disposed of in the first place, since expeditious disposal of application u/s 140 is the basic theme of this beneficial piece of legislation. But, where claimant has filed application u/s 140, but not under any other provision claiming compensation on fault liability principle, application is maintainable and compensation awardable, but not recoverable from the claimant. The insurance company is not entitled to seek trial on merit of any legal defences available to it u/s 149(2) of the Act. Remedy of insurance company is against the owner of the vehicle invoking defences available to it, but not against the claimant. Law laid down by this Court in *Munshiram D. Anand Vs. Pravinsinh Prabhatsinh Anand Society, Navagam Gedh, Jamnagar, , United India Insurance Co. Ltd. Vs. Maganlal Hirabhai Patel and Others, New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Netiyar and Others, Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak* (Coram: M.S. Shah J.) 1998 (2) GLR 1199 and Division Bench in *New India Assurance Co. Ltd. v. Babubhai Purshottambhai Harijan and Ors.* F.A. No. 133 of 2006 with C.A. 527 of 2006 (Coram: Bhawani Singh C.J. and Abhilasha Kumari J.) is correct, contentions to the contrary untenable. Reference is answered accordingly.

10. Therefore, in view of the observations made by the Full Bench of this Court in

the aforesaid decision that the application u/s 140 of the Motor Vehicles Act, 1988 is an independent proceedings and it is maintainable even in absence of Section 163A or 166 application, therefore, contention raised by learned Advocate Mr. Thakkar that the withdrawal of the main application is having adverse effect on the right of the insurance company cannot be accepted and, therefore, same is hereby rejected. Even otherwise, no such contention was raised at the relevant time by the insurance company that the withdrawal of main application was having adverse effect on the rights and contentions of the appellant insurance company and only endorsement of "seen" was made by the advocate for the insurance company appearing before the claims tribunal. Therefore also, contention raised by the learned advocate Mr. Thakkar cannot be accepted and same is, therefore, rejected.

11. Recently, the apex court has, in case of Oriental Insurance Co. v. Zaharulnisha and Ors. reported in 2008 AIR SCW 3251, held that the liability of insurer in respect of third party risks. Statute raises legal fiction that the insurer would be deemed to be a judgment debtor in respect of liability. Paragraphs 14 and 15 which are relevant, quoted as under:

14. Sub-section (1) of Section 149 casts a liability upon the insurer to pay to the person entitled to the benefit of the decree "as if he was the judgment debtor", this is, the Statute raises a legal fiction to the effect that for the said purpose, the insurer would be deemed to be a judgment debtor in respect of the liability of the insurer in respect of third party risks.

15. It is beyond any doubt or dispute that u/s 149(1) of the MV Act, insurer to whom notice of bringing of any proceeding for compensation has been given, can defend the action on any of the grounds mentioned therein. A three Judge Bench of this Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, has extensively dealt with the meaning, application and interpretation of various provisions, including Sections 3(2), 4(3), 10(2) and 149 of the MV Act. In para 47 of the judgment, the learned Judges have held that if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately. In paragraph 48, it is held as under:

Furthermore, the insurance company with a view to avoid its liability is not only required to show that the conditions laid down u/s 149(2) (a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 174(3). After a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by

Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of such a liability but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

12. Therefore, in view of the aforesaid observations made by the apex court as referred to above and the division bench of this Court as well as the full bench of this Court, as referred to above and while keeping in mind the main application u/s 166 filed by the respondents and also application filed u/s 140 of the MV Act, 1988 on the basis of the No Fault Liability, the Claims Tribunal has rightly granted compensation on the principles of No Fault Liability, and application u/s 140 of the MV Act, 1988 is maintainable against the Insurance Company as the liability has not been disputed by the Insurance Co. before the Claims Tribunal and the Insurance Company is under legal obligation to deposit such amount granted by the Claims Tribunal and accordingly, the Claims Tribunal has rightly passed order granting interim compensation in favour of the claimants and in doing so, the Claims Tribunal has not committed any error. Order of the Tribunal is based on the documents produced by the respondents which were not disputed or denied by the insurance company before the Claims Tribunal and, therefore, there is no substance in this group of appeals filed by the Insurance Company and, therefore, accordingly, these appeals are liable to be dismissed.

13. Accordingly, for the reasons recorded herein above, these appeals are dismissed with no order as to costs. Interim relief granted earlier stands vacated.

14. It is directed to Claim Tribunal to disburse the amounts of compensation to the respondent claimant along with accrued interest on FDR and encash the FDR immediately and make payments to the respondent claimant without fail.