

(2005) 11 GAU CK 0013
In the Gauhati High Court
Case No : MAC Appeal No. 20 of 2004

United India Insurance Co.Ltd.

APPELLANT

Vs

H.Lalhmingliana

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A, 166, 166

Citation : (2006) 2 GLT 538

Hon'ble Judges : I.A.Ansari, J and M.B.K.Singh, J

Bench : Division Bench

Advocate : A.R.Malhotra, Advocates appearing for Parties

Judgement

I.A. Ansari, J.—This Appeal under Section 173 of the Motor Vehicles Act, 1988, has arisen out of the award, dated 12.05.2004, passed by the learned Member, MACT, Aizawl, in MAC Case No. 34/2002, directing the present insurerappellant to pay Rs. 3,12,0007 as compensation to the claimantrespondent within one month from the date of the award failing which interest at the rate of 9% per annum would accrue on the awarded amount until full payment is made.

2. The material facts, which have led to the present appeal, may be set out as follows:

The Claimantrespondent No. 1 instituted the MAC Case No. 34/2003 aforementioned under Section 166 of the MV Act, 1988, claiming compensation for the injuries sustained, his case being, in brief, this: The claimant, aged about 40 years, was, at the relevant point of time, employed as a driver by the respondent No. 2 herein to drive his taxi bearing registration No. MZ 01 A5590 and used to receive Rs. 2,500/ as salary per month. On 24.07.2000, when the claimant was driving the said vehicle, another vehicle, namely, Tata Sumo, bearing registration No. MZ 01A9497, came from the opposite direction and collided against the said taxi at Tuipui. The said accident caused injuries 6n the person of the claimant and the claimant remained hospitalized therefore at Civil

Hospital, Champhai, with effect from 24.07.2000 till 28.07.2000. Even after his discharge from the hospital, he has remained under treatment, for, the injuries sustained by him have caused 80% permanent disability.

3. As the registered owner of the said Sumo did not contest the claim proceeding, the present appellant, as insurer of the Sumo, on obtaining permission under Section 170 of the MV Act, 1988, resisted the claim on all such grounds, which were available to the owner of the Sumo, the case of the insurerappellant being, briefly stated, that the inquiry report submitted by the police indicated that the said collision between the two vehicles aforementioned had taken place due to fault of the drivers of both the said vehicles and, hence, when the claimant himself was at fault, he could not have made a claim under Section 166 of the MV Act, 1988.

4. Confronted with the above written statement, the claimant made a prayer for converting the proceeding from Section 166 to one under Section 163 A of the MV Act, 1988. As this prayer was not objected to by the insurerappellant, the learned Tribunal, vide its order, dated 24.10.2002, allowed the prayer of conversion. The claim application was, thereafter, treated as an application under Section 163 A of the MV Act, 1988.

5. In support of his claim, the claimant adduced evidence by examining one witness. By the impugned award, the learned Tribunal allowed the claim application as indicated hereinabove. Aggrieved by the impugned award, the insurer has preferred the present appeal.

6. I have heard Mr. A.R. Malhotra, learned counsel for the insurerappellant. None has appeared on behalf of the claimantrespondent No. 1.

7. It has been submitted by Mr. A. R. Malhotra, learned counsel for the insurerappellant, that the claim application made under Section 166 of the MV Act could not have been legally converted into an application under Section 163 A. At any rate, contends Mr. Malhotra, the claimant being himself at fault, he was not entitled to any compensation even under Section 163 A. Lastly, it is contended by Mr. Malhotra that the claimant remained in the hospital only for four days and the evidence adduced by the claimant was grossly inadequate to show that he had suffered from 80% disablement and/or that he is entitled to the quantum of compensation, which the learned Tribunal has, eventually, granted.

8. Let us, first, consider the question as to whether a person, whose own wrongful act, negligence or default, causes an accident or forms the cause of an accident, can maintain an application under Section 163 A. While considering this question, it is pertinent to bear in mind that the source forming legal basis for payment of compensation can be traced to the law of torts. Subject to statutory modifications to the rules of common law, a right to claim compensation for tortuous act arises, under the common law, only when the person, proceeded against or against whom the claim is made, is proved to have failed to perform a

legal obligation causing injury to any other person or to have committed "an act of omission or commission causing legal injury to the person lodging the claim.

9. 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, *cxjncdvedunder*, 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.

10. 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 & Anr. Vs. Balkrishna Ramchandra Nayan & Anr.* (AIR 1977SC1248). 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, *mHajiZakaria Vs. Naoshir Cama* (AIR 1976 AP171), 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.

11. 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 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.

12. 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.

13. 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 legally, he is under no 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 at Claims Tribunal is entitled to award compensation, which appears to it to be just, when it is satisfied, on IT proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence, if accepted, would lead to strange results.

14. 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.?"

15. 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 V" concerned had received injury or died in an accident arising out of use of the vehicle at 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.

16. 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 92A, 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 subSection (1) in respect of death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under the that subSection 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 subSection (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 subSection (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. 17. It may, now, be carefully noted that it was Section 92 A, 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, subSection (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 "hitandrun" 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".

18. It was, in fact, in *Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai & Anr.* (AIR 1987 SC1690), that the Apex Court, taking note of the fact that under SubSection (3) of Section 92 A, 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.

19. 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."

20. Taking note of the language of SubSection (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."

21. 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 Vehicle 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.

22. 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 "nofault" under Section 92A. In order to determine if a claim for compensation could have been made on the principle of "nofault", under Section 92 A, by a person, whose own wrongful act, neglect or default had been the cause of accident, one may take note of SubSection (4) of Section 92A, which read thus:

"(4) A claim for compensation under subSection (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."

23. A bare reading of SubSection (4) of Section 92A clearly shows that a claim for compensation on the basis of nofault, envisaged by Section 92 A, 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 "nofault" under Section 92A.

24, Be that as it may, a Division Bench of the Madras High Court in K. Nandakumar Vs. Managing Director, Thantai Periyar Transport Corporation, reported in 1992 (2) TAG 515 (Mad), held that even for the purpose of invoking Section 92A, 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 nofault basis even under Section 92A did not arise at all. Rejecting this view, the Apex Court, in K. Nandakumar Vs. Managing Director, Thantai Periyar Transport Corporation, reported in (1996) 2 SCC 736, observed and held as follows:

"4. By reason of subSectional) of Section 92A, 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 subSection (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. SubSection (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 92A, particularly, the first part of subSection (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". 25. 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 SubSection (4) of Section 92 A stated, a claim under Section 92 A, on the principle of nofault, 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 under Section 92 A 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 nofault under Section 92A, was maintainable even if the victim had suffered death or permanent disablement on account of his own wrongful act, neglect or default.

26. It is worth noticing that Section 92A of the Motor Vehicle Act, 1939, stood replaced by Section 140 of the Motor Vehicle Act, 1988, when the latter statute came into force. Since Section 92 A is replaced by Section 140 and SubSection (4) of Section 140 embodies the same provisions as were contained in the SubSection (4) of Section 92 A, 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 SubSection (4) of Section 140 is payable to the victim or his legal representatives, as the case may be.

27. Turning to Section 163 A, which forms the real subjectmatter of controversy at hand, it may be pointed out that no provision, such as, the one that we have, now, in the form of Section 163 A, existed in the Motor Vehicles Act, 1939. No such provision existed even in the Motor Vehicle's "Act, 1988, when this Act initially came into force. As a matter of fact, Section 163 A 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 nofault, under

Section 140, which merges, in terms of Section 141, in the final award to be made on the basis of "fault liability" under Section 166.

28. Section 163 A 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 under Section 163 A is, however, materially different from the minimum prescribed Compensation payable under Section 140, though both these provision dispense with the proof of negligence on the part of the owner of the vehicle or vehicles concerned or of any other persons.

29. In fact, the present Motor Vehicles Act, 1988, provides an option to the claimant to obtain interim compensation under Section 140 being the minimum prescribed compensation until final adjudication of his claim, under Section 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 under Section 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 under Section 163 A.

30. What is, now, worth noticing is that Section 163 A does not incorporate a provision, such as, the one, which we can notice in SubSection (4) of Section 140, namely, that a claim for compensation under subSection (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.

31. Notwithstanding, however, the fact that Section 163 A does not contain the provisions, such as, the one, which SubSection (4) of Section 140 embodies, what is of paramount importance to note is that Section 163A opens with a nonobstante clause of extremely wide nature, namely, notwithstanding anything contained in this Act or in any other law for the time being in force. This nonobstante clause shows that by inserting Section 163 A, the Parliament intended to provide a mechanism for awarding compensation with the help of a predetermined formula without insisting on proof of negligence. Section 163 A has, thus, been introduced by way of a social security scheme and it is a code by itself. Section 163 A is an exception to Section 166 and takes within its sweep even those cases, wherein the victim's own negligence leads to the accident.

32. In short, even when the victim himself was responsible for the accident, he can, as an injured, or his legal representatives, when the victim dies as a result of the accident, maintain an application for compensation under Section 163 A and compensation cannot be refused by the Tribunal on the ground that the victim himself was responsible for the injury suffered by him or the death, which he met with.

33. We may, however, point out that though Section 163 A opens with a nonobstante clause of extremely wide nature as indicated hereinabove and makes provisions for compensation available to even in those cases in which the victim's negligence had been the cause of the accident, a Division Bench of Karnataka High Court held, in *Appaji Vs. M. Krishna & Anr.*, reported in 2005 (1) TAG 994 (Kant), that Section 163A is not intended to provide relief to those, who suffer in a road accident because of their own rashness, negligence or imprudent act. The views, so expressed, in *Appaji (supra)*, go contrary to a Division Bench judgment of the Gujarat High Court in *New India Insurance Co. Vs. Munna Maya Basant*, reported in 2000 (1) TAG 397 (Guj.), wherein the Gujarat High Court took the view that non obstante clause appearing in Section 163 A permitted even the tortfeasor to claim compensation and that the Insurance Company can contest the claim only on the ground of total absence of a contract of insurance and not otherwise.

34. Setting at rest the controversy as to whether Section 163 A would cover the cases, wherein negligence of the victim was the cause of the accident, the Apex Court in *Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd.* (2004) 5 SCC 385, observed thus, We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163 A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that Parliament intended to insert a non obstante clause of wide nature which would mean that the provisions of Section 163 A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163 A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of."

35. In the face of the position of law, so clearly pronounced by the Apex Court in *Deepal Girishbhai Soni (supra)*, there can be no escape from the conclusion that it is permissible even for a driver, whose own wrongful act, neglect or default might have formed the cause of the accident resulting into his own injuries, to maintain an application for compensation Section 163 A. Considered thus, it is clear that in the present case, the application made under Section 163 A of the Act could not have been rejected merely on the ground that it was the claimant, whose negligence, as a driver, had caused the said accident.

36. Now, turning to the question as to whether, a proceeding under Section 166 can be converted into a proceeding under Section 163A of the MV Act, 1988 (in short "the MV Act"), and compensation can be awarded on the basis of the provisions of Section 163 A, it is of paramount importance to note that the

claimant instituted a proceeding under Section 166 of the MV Act. For sustaining a claim under Section 166 of the MV Act, the claimant has to establish that the accident, in question, took place due to rash and negligent driving of the vehicle, whose owner and insurer is liable to pay the compensation, for, an application for compensation under Section 166 is, basically, an application for compensation against tortious liability of the owner of the vehicle involved in the accident. For establishing tortious liability, negligence on the part of the owner of the vehicle, in question, must be established unless the law enacted, in this regard, provides otherwise. By incorporating provisions, such as, Section 140 and 163 A, the legislature has absolved a claimant from proving, if he chooses, fault on the part of the driver of the vehicle or any rashness or negligence in the use of the vehicle at a public place.

37. As against the proof of the fault, which the nature of a claim proceeding initiated under Section 166 demands, when a claim under Section 163 A is made, the claimant need not prove fault on the part of the driver of the vehicle. This is the basic difference between an application made under Section 166 and an application filed under Section 163 A. This apart, the application under Section 140, which relates to the realization of a fixed amount of money as compensation without proof of fault, can be resorted to, as an interim arrangement, when an application for compensation is made under Section 166 and not when an application is made under Section 163 A of the MV Act, for, the amount paid under Section 140 merges with the award finally given by a Tribunal under Section 168 of the MV Act arising out of an application made under Section 166 thereof. This is clear from the provisions of Section 163 B, which lays down, in no uncertain words, that where a person is entitled to claim compensation under Sections 140 and 163 A, it shall file claim under either of the said Section and not under both.

38. Dealing with the above aspect of the matter, this Court in *Bina Prasad Sonari Vs. Manager, United India Insurance Co. Ltd. & Ors.* reported in 2005 (25) AIC849 Gau., observed and held as follows:

"An application for compensation can be made either under Section 166 or under Section 163 A of the said Act. If the application is under Section 163 A, the question of proving the negligence on the part of the driver of the offending vehicle does not arise at all; rather, in a case, wherein compensation is claimed under Section 163 A, on proof of the accident, age of the deceased, the income of the deceased and the relationship of the claimant with the deceased, the structured formulae, contained in the Second Schedule framed under Section 163A, would be applied. However, when the claim application is made (as is the case at hand) under Section 166, the claimant has to prove negligence on the part of driver of the offending vehicle and only on such a proof being made available to the Tribunal, the Tribunal can determine the amount payable to the claimant as compensation and for determining the amount of compensation, the structured formulae may be used as the guide. For applications made under

Section 166, the provisions for payment of nofault liability amount has been made under Section 140 of the said Act. Section 140 is, thus, applicable only if the compensation is claimed under Section 166. That nofault liability amount cannot be made available to an applicant under Section 163 A is clear from the provisions of Section 163B inasmuch as Section 163B gives every claimant the option to either make an application under Section 140 for nofault liability amount pending determination of the compensation claimed under Section 166 or lodge a claim for determination of compensation, as a whole, under Section 163 A, by using the structured formulae contained in the Second Schedule. Thus, the question of applying for payment of nofault liability amount under Section 140 does not arise at all if the claim application is under Section 163 A"

39. We completely agree with the position of law laid down in *Bina Prasad Sonari* (*supra*).

40. We may pause here to point out, once again, that no provision, such as, the one that we have, now, in the form of Section 163 A, existed in the Motor Vehicles Act, 1939, which preceded the enactment of the Motor Vehicles Act, 1988. Such a provision did not also exist in the Motor Vehicles Act, 1988, when this Act came into force. As a matter of fact, Section 163 A has been introduced by the amendment Act No. 54 of 1994 with effect from 14.11.1994 as against the fixed minimum interim compensation awardable under Section 140 of the MV Act on the principle of nofault, which merges in the final award to be made on the basis of "fault liability" in accordance with Section 141, Section 163 A 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 under Section 163A is materially different from the minimum prescribed compensation payable under Section 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. In short, proof of negligence is not necessary for availing compensation either under Section 140 or 163 A.

41. The present MV Act provides an option to the claimant to obtain interim compensation under Section 140 being the minimum prescribed compensation until final adjudication of his claim, under Section 166, leading to the delivery of the award in which would get merged the interim compensation, if any, already received by the claimant under Section 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 under Section 163 A. The provisions embodied in Section 166 as well as under Section 163 A have both advantages as well as disadvantages appended thereto. For instance, while Section 166 requires proof of fault as a condition precedent for granting of

compensation, there is no ceiling in the amount of compensation, which can be granted under Section 166, and, further, Section 166 can be resorted to irrespective of the income of the person, who has sustained injuries or met with death. As against this, while Section 163 A dispenses with the proof of fault, mis Section (i.e. Section 163 A) can be resorted to only when the annual income of the deceased does not exceed Rs. 40,000/-. Similarly, while in Section 166, as already indicated hereinabove, there is no limit to which expenses for treatment incurred by the injured can be awarded, the total medical expenses to be awarded cannot, in a proceeding under Section 163 A, exceed Rs. 15,0007. There are several other such limitations if one takes recourse to Section 163 A for obtaining compensation. For instance, the loss of consortium under Section 163 A is limited to Rs. 5,000/, whereas, in the light of the decision in *Lata Wadha & Ors. Vs. State of Bihar & Ors.*, reported in (2001) 8 SCC 197, the consortium can be, in an appropriate case, as high as Rs. 50,000/-. Yet another advantage of taking recourse to Section 163 A is that it reduces the delay, which, ordinarily, occurs due to the fact that the claimant is required to prove fault. Noticing some of these prominently distinguishing features of Section 163 A, the Apex Court *mDeepal Girishbhai Soni&Ors. Vs. United India Insurance Co. Ltd.*, reported in 2004(5) SCC 385, observed as follows:

"Section 140 of the Act dealt with interim compensation but by inserting Section 163A, the Parliament intended to provide for making of an award consisting of a predetermined sum without insisting on a longdrawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victims in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under Section 166 of the Act. Chapter XI was, thus, enacted for grant of immediate relief to a Section of people whose annual income is not more than Rs. 40,0007having regard to the fact that in terms of Section 163A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefore. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature.

Payment of the amount in terms of Section 140 of the Act is adhoc in nature. A

claim made thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163A of the Act does not contain any such provision.

If no amount is payable under the fault liability or the compensation which maybe received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the Scheme. Section 163A, on the other hand, nowhere provides that the payment of compensation of nofault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability".

42. That one is required to prove fault to become entitled to receive compensation under Section 166 and that the recourse to Section 140 can be had as an interim arrangement subject to final determination can be easily discerned from the observations made in Deepal Girishbhai Soni (supra), which runs as follows:

"The Scheme envisaged under Section 163A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40.000/ or less is covered thereunder; whereas Section 140 and 166 cater to all Sections of society.

It may be true that Section 163B provides for an option to a claimant to either go for a claim under Section 140 or Section 163A of the Act, as the case may be, but the same was inserted "exabundanti cautela" so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of nofault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163A or Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity".

43. From what have been pointed out above, it becomes abundantly clear that the present MV Act lays down two comprehensive and independent, but complete in itself, mechanism for receiving compensation for injuries sustained or death caused in motor vehicular accidents. Both the schemes for compensation, one conceived under Section 166 and the other perceived by Section 163 A, are

mutually exclusive and independent of each other and it is for a person, who wants to claim compensation, to decide as to which procedure or mechanism he or she would opt for.

44. In the face of clearly laid down schemes for obtaining compensation under the two Sections, namely, Section 166 and Section 163 A and when it is left with the claimant to choose the course of action, no one can maintain a claim both under Section 166 as well as Section 163 A. The MV Act also does not conceive of a situation, when, based on an application made under Section 166, the Tribunal, on its own, on the failure of the claimant to prove fault, can award compensation by taking recourse to Section 163 A. When a claimant makes an application for compensation under Section 166 and also receives interim compensation under Section 140, he shall, so long as his application for compensation remains pending under Section 166, prove, as a condition precedent for succeeding in obtaining compensation under Section 166, that the accident took place due to fault or negligent or default of the owner or owners of the vehicle or vehicles concerned or of any other persons.

45. The above aspect of law has been succinctly explained by the Apex Court, in *Deepal Girishbhai Soni (supra)*, in the following words:

"The question may be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence whereunto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163A thereof.

The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163A of the Act is interim in nature."

46. Embedded, thus, in the scheme of Section 166 is the requirement for the Tribunal to frame an issue or for the claimant to, at least, bring on record materials as regards fault or neglect or default, as indicated hereinbefore, in order to sustain his claim under Section 166. If in a proceeding under Section 166, the claimant obtains interim compensation under Section 140, but adduces no evidence to prove fault or negligence or default, his application under Section 166 cannot succeed and the Tribunal cannot award compensation on the basis of the structured formula by taking recourse to Section 163A, for, it is for the claimant really to decide which course of action he or she shall opt for. Whether it

is, on the basis of an application for amendment made by the claimant, permissible to amend a proceeding under Section 166, to one under Section 163A is a question, which has not arisen in the present appeal and we are not inclined to make any comment on this aspect of the matter.

47. Now, turning to the question as to whether it is permissible for a Tribunal to allow a claimant to amend his application from the one made under Section 166 to an application under Section 163 A, what needs to be noted is that the foundation for making an application in both the proceedings are fundamentally different, for, while in an application under Section 166, fault on the part of the driver of the vehicle involved in the accident must be proved, the proof of such fault is dispensed with, when an application is made under Section 163 A. Thus, as already indicated hereinabove, the legislature has provided a claimant with two different schemes for claiming compensation. While the accident itself gives cause of action for relaxation of compensation under Section 163 A, the cause of action for sustaining a claim under Section 166 is not merely the accident, but a tortious act of failing to take care, which the owner or the driver of the vehicle owes to the injured or the deceased as the case may be, However, in either case the foundation for the claim is the accident, for, even in a claim made under Section 166, the accident forms an integral and inseverable part of the cause of action. This apart, the MV Act is a benevolent legislation and, hence, this enactment needs to be liberally construed. Construed thus, it is abundantly clear that the cause of action in both the proceedings, namely, the proceeding under Section 166 and 163 A are not wholly alien to each other inasmuch as at the root of both the claims lies the accident. Whether in a given case the Court shall permit the amendment of a proceeding under Section 166 to one under Section 163 A is a question, which would depend on the facts of the given case, for, there may be case where the injured or the deceased does not fall in the limited income group of Rs. 40,000 per annum, if a claimant does not fall in the income group of persons for whom the provisions of Section 163 A are incorporated, the Tribunal may decline to allow the amendment of the proceeding under Section 166 to one under Section 163 A.

48. In the case at hand, since the annual income of the injured was, according to the claim application, less than Rs. 40,000/ per month, there was no impediment, on the part of the learned Tribunal to allow the claimant to amend his claim application from the one made under Section 166 to one under Section 163 A, more so, when we notice that the insuredappellant had agreed before the learned Tribunal to treat the application made under Section 166 as an application made under Section 163 A. We, therefore, see no reason to interfere with the impugned award on the ground that the learned Tribunal allowed the claimant to convert the proceeding from one under Section 166 to under Section 163 A, for, such conversion was nothing but amendment of the proceeding from the one under Section 166 to under Section 163 A and we see, in the facts and circumstances of the present case, no reason to interfere with the same.

49. Turning to the question as to whether the quantum of compensation awarded to the claimant is sustainable or not, it is pertinent to note that the evidence given by the claimant's wife that they have four minor children, the claimant was a driver by profession and he was aged about 42 years at the time of accident, on 24.07.2000, have remained unshaken, it is in the evidence of the claimant's witness that the claimant suffered grievous injuries and was admitted at Champai Civil Hospital on 24.07.2000 and was discharged from there on 28.07.2000. It is, however, clear from the evidence of this Witness that her husband has continued to remain under treatment and that the injuries suffered by her husband have resulted into 80% permanent disability. This witness's evidence further shows that her husband is in need of an attendant and he is not able to undertake any work. This witness has proved the discharge certificate from the hospital, which supports the evidence given by this witness that the claimant was admitted to the Hospital, on 24.07.2000 and discharged on 28.07.2000. The discharge certificate also reveals that the injuries, which the claimant had suffered, were dislocation of hip joint and at the time of discharge he was advised continue to take medicine. It is, thus, clear that the claimant's treatment did continue, notwithstanding the discharge from the hospital. The claimant has also proved several reports of investigation, which show that the claimant's treatment has continued. In such a circumstances, we notice that the medical certificate (Ext. C5), which has given by a specialist of the said Civil Hospital, mentions that the claimant sustained fracture of pelvis, compression of 6th cervical spine etc., which has resulted into 80% disablement. The correctness of this certificate could not be shaken by the insurer.

50. What follows from the above discussion is that though the claimant's witness was crossexamined by the insurer, the material aspects of her evidence has remained unshaken as regards the injuries sustained by her husband and/or the extent of his disability.

51. Situated thus, it is clear that the claimant has suffered 80% permanent disability and he is unable to undertake the job of a driver. It also clearly surfaces from the evidence on record that the claimant, indeed, used to receive Rs. 2,5007 as salary. In such a situation, the award of Rs. 3,12,000/ cannot be said to be excessive and/or unreasonable and/ or illegal and/or unjustified.

52. In the above view of the matter, we do not find that the impugned award needs any interference in appeal.

53. In the result and for the foregoing reasons, this appeal fails and the impugned award is maintained. The appellant is hereby directed to make payment of the awarded amount in terms of the directions given in the award.

54. With the above observations and directions, this appeal shall stand disposed of. No order as to costs.