

(2011) 11 KL CK 0023

In the High Court Of Kerala

Case No : M.A.C.A. No. 2414 of 2008 and connected cases

United India Insurance Company Ltd.

APPELLANT

Vs

Ratheesh

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163, 163A, 163A(2), 166
Workmens Compensation Act, 1923 — Section 2, 2(1)

Citation : (2012) ACJ 2206 : (2012) 1 KLJ 43 : (2011) 4 KLT 927 : (2012) 2 RCR(Civil) 226

Hon'ble Judges : V. Chitambaresh, J;R. Basant, J

Bench : Division Bench

Advocate : Mathews Jacob and P. Jacob Mathew, for the Appellant; K.K. Chandran Pillai (Sr. Advocate), Lal George, A.S. Sajush Paul, Viju Thomas, M. Meena John, P.V. Chandra Mohan, G.D. Panicker, Jeena Joseph, Thomas James Mundackal, K.U. Bini and K.C. Santhosh Kumar, for the Respondent

Judgement

R. Basan, J.—When plurality of vehicles are involved in an accident does the victim/claimant have the unfettered option/right to claim compensation under S. 163A of the Motor Vehicles Act against either or both the owners/insurers of the vehicles? Does the dictum in United India Insurance Co. Ltd v. Madhavan (2011 (3) KLT 452) require re-consideration?

2. These are the questions of law of relevance that arise for consideration now.

3. A brief reference to crucial facts would be apposite. There was an accident involving two vehicles. There was a collision between a Tata Sumo van (the insured vehicle hereafter) and a motor-cycle. In the motor-cycle, at the relevant time, there were three passengers-rider and two pillion riders. The accident took place on 5/8/1999. All the three passengers in the motor-cycle suffered injuries. One of the two pillion riders succumbed to the injuries suffered by him. Both the injured persons and the legal heirs of the deceased pillion rider claimed compensation. They claimed compensation under S. 163A of the M.V. Act. They

arrayed the owner, driver and insurer of the insured vehicle and staked their claims against them. In the claim filed in respect of the two passengers (other than the rider of the motor vehicle), the rider, owner and insurer of the motorcycle were also arrayed as parties later. It is significant to state that no relief was claimed against the rider, owner or insurer of the motor cycle.

4. The Tribunal under the impugned common award came to the conclusion that the claim under S. 163A of the M.V. Act is legally sustainable. The Tribunal held that the insurer of the insured vehicle is liable to compensate all the claimants.

5. The insurer claims to be aggrieved by the impugned award. The short challenge raised by the appellant/insurance company is that when plurality of vehicles are involved in an accident, the owner/insurer of all such vehicles are liable to answer the claim under S. 163A of the M.V. Act. The impugned common award inasmuch as it directs payment of compensation under S. 163A of the M.V. Act by the insurer of one of the two vehicles involved in the accident is not legally sustainable. The owner/insurer of the motor-cycle must also be made liable to the extent of 50%. This is the contention raised by the learned counsel for the insurance company.

6. In M.A.C.A. Nos.2414, 2467 & 2470 of 2008, the common appellant is the insurance company. In M.A.C.A. No. 1248/09, the appellant is the rider of the motorcycle. The Tribunal had awarded compensation. The appellant/rider is aggrieved by the compensation awarded by the Tribunal.

7. We shall initially consider the challenge raised on behalf of the insurance company. The question of law raised, we note, is already covered by a decision of the Division Bench in Madhavan (supra). Paragraph-6 of the said decision had considered the very same question in detail. We extract paragraph-6 of the said judgment below:

6. The next question is whether in a claim under S. 163A of the Motor Vehicles Act, the driver, owner and insurer (if any) of the other vehicle involved in the accident are necessary parties and whether the non impleadment of such driver, owner and insurer would adversely affect the claim under S. 163A against the owner and insurer of the vehicle involved. There is nothing in S. 163A to show that when two vehicles are involved, the claim must be staked against the owner and insurer of both vehicles. As in the case of S. 140, we must hold that option is of the claimants to claim against the owner/insurer of either or both the vehicles. A claim under S. 163A can lie only against the owner of the vehicle and the authorised insurer. It cannot lie against a driver (unless he is the owner also). The language of S. 163A makes the position crystal clear. In this case evidently realising the difficulty of recovering the amount from the owner of the other vehicle, which was not insured, the claimants have chosen to stake their claim only against the owner and the insurer of the vehicle in which the deceased was travelling. That option of the claimants is not in any way fettered or restricted by the language of S. 163A. We therefore feel it absolutely safe to conclude that in a

claim under S. 163A, option is on the claimants, where plurality of vehicles are involved in the accident to stake the claim against either or both the owners/insurers of the vehicles involved. In that view of the matter, the claim in this case against the owner and insurer of the vehicle, in which the deceased was travelling without arraying the owner and insurer of the other vehicle involved in such accident, is perfectly justified and cannot be faulted. The challenge on that aspect is also found to be without any merit.

8. The learned counsel for the insurance company contends that the matter requires more detailed and exhaustive consideration. The learned counsel points out that the language of Ss, 140 and 163A of the M. V. Act was not adverted to in detail in *Madhavan (supra)*. The use of different language in the two Sections is crucial and therefore reference must be made to the language of the statutory provisions. It is the contention of the learned counsel for the insurance company that the dictum in *Madhavan (supra)* on this aspect may require re-consideration.

9. We shall initially extract the provisions of Ss.140 and 163A of the M.V. Act below:

140. Liability to pay compensation in certain cases on the principle of no fault

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or any of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other

law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163 A.

163A. Special provisions as to payment of compensation on structured formula basis.-- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.- For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

(the crucially relevant portions are emphasised)

10. The language of S. 140 of the M.V. Act makes it very clear that when more than one vehicle is involved in the accident, the owners of the vehicles shall be liable jointly and severally to pay the specified amount of compensation under S. 140 of the M.V. Act. The liability is declared to be joint and several. However, when it came to S. 163A of the M.V. Act, the legislature did not significantly incorporate the stipulation that if two vehicles are involved, the owners/insurers of those vehicles shall be jointly and severally liable to pay the compensation amount prescribed under the structured formula in Schedule II of the M.V. Act. The learned counsel for the appellant/insurance company argues that the different language used by these provisions is significant and need more detailed consideration.

11. We have got to remember that no fault liability as a concept was introduced into the Indian law relating to compensation payable for motor accidents long later. Under S. 166 of the M.V. Act and its corresponding predecessor provisions, a forum is provided for expeditious and inexpensive enforcement of the claim for compensation which right existed even earlier under the law of torts. S. 166 of the M.V. Act does not create any new or different substantive legal liability. The liability under the law of torts is made enforceable and recoverable by the simplified procedure under S. 166 of the M.V. Act and its predecessor provisions.

12. It is in this context that S. 140 of the M.V. Act and its predecessor provisions came into the statute. As a first step the legislature declared that a fixed assured sum shall be paid to the victims of motor accidents who have suffered permanent disablement as also the legal heirs of persons who have succumbed to such injuries. It is unnecessary to advert precedents in any greater detail. The law under S. 140 of the M.V. Act is well, settled. Negligence or contributory negligence is irrelevant. Where death or permanent disablement results from an accident arising out of use of motor vehicle or motor vehicles, the owner or owners of the motor vehicles are made jointly and severally liable to pay the prescribed specified amount of compensation - Rs. 25,000/- in the case of permanent disablement and Rs. 50,000/- in the case of death, as the law now stands.

13. The legislature in 1994 introduced S. 163A into the Statute book. While under S. 140 even without proving any fault only a specific amount alone could be claimed, under S. 163A comprehensive claim can be staked for compensation by the victims who have suffered permanent disablement or legal heirs of a deceased victim.

14. Provisions of S. 140 of the M.V. Act make it clear that payment under S. 140 is only ad hoc and interim. The claimants are entitled, even after claiming the amount under S. 140 of the M.V. Act, to claim the entire amount of compensation which would otherwise be payable by resort to S. 166 of the M.V. Act. The only stipulation is that the amount paid under S. 140 must be adjusted towards the amount that would be payable under S. 166 of the M.V. Act.

15. The legislature, with long experience of working S. 140, and its predecessor provisions had introduced 163A into the Motor Vehicles Act in 1994 and in S. 163A of the M.V. Act significantly there is no reference at all to the nature of liability of owners/insurers if there is plurality of vehicles involved in the accident. The difference is significant. It could not be an inadvertent omission. S. 140 speaks of the arrangement when plurality of vehicles are involved. The liability is declared to be joint and several. But when it came to S. 163A of the M.V. Act the legislature did not incorporate such a stipulation.

16. Why? The query is pored. We have already noted that it could not be an inadvertent omission and this is eminently clear from S. 163A(2) of the M.V. Act which eloquently conveys to the court that the legislature was cognizant and seized of the possibility of plurality of vehicles being involved in the accident Wrongful act, neglect or default of the owner of the vehicle or vehicles concerned or of any other person need not be proved in a claim under S. 163A of the M.V. Act, it is declared in S. 163A(2), This definitely reveals to the court that it was a conscious deviation from the scheme that was stipulated under S. 140 of the M.V. Act.

17. So far as S. 140 of the M.V. Act is concerned, it is now trite that claim can be raised against either or both owners/insurers of the vehicles. The decision in

Oriental Insurance Company Limited Vs. Lakshmykutty Amma and Others, Sreedevi and Others and Sudhakumary and Others, makes the position clear that the Tribunal need not identify at the stage of award of compensation under S. 140 of the M.V. Act all the vehicles (persons) liable to pay compensation. It is therefore evident that a claim under S. 140 can be staked against the owner of either vehicle. The insurer consequently will be liable to indemnify the owner of the vehicle liable.

18. We requested the learned counsel to advance arguments at the Bar as to why totally different semantics and dynamics have been employed by the legislature while enacting S. 163A of the M.V. Act. Significantly it is not even mentioned in S. 163A that the liability is joint and several. Even under S. 140 of the M.V. Act claim can be staked against either or both the owner/owners of the vehicle. It therefore appears to us to be evident that in a claim under S. 163A also the choice/option must be for the claimant to stake claim against either or both owner/insurer of the vehicles involved in the accident.

19. Why has different language been employed by the legislature? It appears to us that the ad hoc/interim nature of the payment under S. 140 must in this context assume significance. While the award under S. 163A amounts to comprehensive resolution of the compensation payable in respect of the accident, the one under S. 140 is only interim in nature. In a claim under S. 166 the amount already paid under S. 140 has to be adjusted.

20. At the stage of S. 140, the Tribunal is not at all to consider who would be liable under S. 166 of the M.V. Act. But eventually when a claim under S. 166 is disposed of any amount paid under S. 140 will be liable to be adjusted. If there are two vehicles A and B involved in the accident and the claim under S. 140 is staked only against the owner/insurer of vehicle A and in the claim under S. 166 of the M.V. Act it is found that the owner/insurer of vehicle B is entirely liable to compensate the claimant, the payment made under S. 140 must still be adjusted against the total amount awarded under S. 166. To facilitate this it appears that under S. 140 it is declared that the liability is joint and several. To continue with the example referred above, the owner/insurer of B while discharging the liability under a S. 166 award will be entitled to claim adjustment of the amount under S. 140 already paid by the owner/insurer of vehicle A. In the absence of a stipulation like that (making it clear that the liability is joint and several) it may have been difficult for the owner of the vehicle B to claim such adjustment. In view of the language employed by S. 140 it is now possible for the owner/insurer of the vehicle B to contend that notwithstanding the fact that the owner/insurer of vehicle A may have discharged the liability, such payment is liable to be adjusted towards the liability of the owner/insurer of vehicle B under S. 166 of the M.V. Act.

21. This appears to us to be the only purpose for which the liability under S. 140 is declared expressly to be joint and several whereas such stipulation is not made in S. 163A. The award under S. 163A settles the claim and after receiving

the amount under S. 163A no further claim can be staked under S. 166. This position is well settled by the decisions in *Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala* (2001 (2) KLT 235 (SC) = 2001 ACT 827 SC) and *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, .*

22. We are unable to find any other reason as to why a different language is used under Ss. 140 and 163A of the M.V. Act by the legislature so far as the nature of the liability of the owner/insurer is concerned, when plurality of vehicles are involved. Consequently, therefore, it appears to us, that the option is entirely on the claimant to stake his claim against either or both owners/insurers of the vehicles involved in a claim under S. 163A of the M.V. Act. That right/option of his got to be protected.

23. It will now be apposite to consider the nature of the liability under S. 163A. It is unnecessary to refer to the scheme of S. 163A in any further detail. We find exhaustive consideration of the question in *Kodala (supra)* and *Deepal Girishbhai Soni (supra)*. A Division Bench of this Court in *National Insurance Co. Ltd., v. P.C. Chacko* (2011 (3) KLT 693) had also considered the nature of the liability under S. 163A in detail. We deem it sufficient to state that S. 163A creates a new, distinct, different, absolute and substantive statutory liability. In *Deepal Girishbhai Soni (supra)*, the Supreme Court in paragraph 39 has referred to the nature of the liability and the scheme of the M.V. Act in the following words:

39. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself, xxxxxx

The liability under S. 163A has to be ascertained from the language employed by the legislature in S. 163A. The non obstante clause with which S. 163A opens realistically recognizes the impressions which may remain in the mind of a law person in India in the light of the law that was prevailing earlier. Suffice it to say that anew, distinct, different, absolute, substantive statutory liability is created under S. 163A and as stated in *Deepal Girishbhai Soni (supra)* it is by way of a social security scheme -a code by itself. The non-obstante clause demands the effacement of entrenched concepts in legal minds before the attempt is made to understand the substantive statutory liability created and conferred under S. 163A of the M.V. Act.

24. It is evident that S. 163A postulates a social security scheme. The language of S. 163A makes the provision crystal clear. The fact that the insurance company is made primarily liable is, according to us, eloquent. That emphasises the social security dimension of the statutory provision. The liability under S. 166 or S. 140 of the M.V. Act does not rest primarily on the shoulders of the insurance company. It rests on the owner/driver (under S. 166) and the owner alone (under S. 140). But come S. 163A, the liability is on the insure primarily. The dynamics of S. 163A is important. While the insurer's liability to indemnify the owner (and pay compensation to the claimant) stems out of the stipulations in the policy of insurance (the stipulations in which policy are statutorily

regulated), the liability under S. 163A arises from the status as authorised insurer in respect of the vehicle. The methodology accepted by the legislature of making the authorised insurer principally liable under S. 163A eminently epitomises the social security dimension of the statutory provision. "Suffering" of the victim and not "fault" of any other is the central theme or foundation of liability under S. 163A. All encompassing concern and compassion of the legislature in the socialist republic in favour of the unfortunate sufferer is the signature tune of the new statutory provision. The policy of insurance is relevant only to ascertain the status as authorised insurer. Thereafter the terms of the policy become irrelevant and the liability of the authorised insurer is specified in S. 163A. It is true that under S. 163A, "the owner of the motor vehicle or the authorised insurer" is made liable. But it is evident that where there is an authorised insurer the insurer in respect of the vehicle that burden is on the authorised insurer. It is true that the owner of the motor vehicle is also declared to be liable under S. 163A. But that evidently must refer to a case where there is no statutory insurance. The owner is also made liable under law along with the insurer and that is, according to us, only to cover a case where there is no authorised insurer in respect of the vehicle. A defaulter owner who has breached his duty to insure his vehicle alone is likely to be saddled with liability under S. 163A. In giving this interpretation also the social security dimension of S. 163A must be reckoned as most important and crucial.

25. The welfare State's duty to compensate the victims/sufferers by a statutory social security scheme accepted. The authorised insurer who is given monopoly rights to do motor insurance business is saddled with the liability under S. 163A. The State appears to have outsourced its obligation to compensate the victim (evidently arising from its inability to prevent negligence on the road or its inability to provide adequate infrastructure for road users and ensure the safety of the road users) in favour of authorised insurers who are permitted to undertake business of motor vehicle insurance exclusively. The thrust and accent under S. 163A is to ensure that the victim is compensated by the insurer. That commitment has prompted the legislature to make the insurer principally liable under S. 163A and also to concede the option to the claimant to choose whichever owner/insurer that he wants to proceed against. That discretion/option is left best to the victim/claimant. He can choose the person against whom the claim is to be staked so that early and certain recovery can be ensured.

26. Will not this lead to the innocent owners/insurers being compelled to pay compensation while the guilty/offending owners/insurers go scot free ? Where is justice in such an event? Will not the law offend the primary constitutional mandate under Art.21 that any law has to be fair, just and reasonable? A flurry of questions are thrown at the Court. We are in the least impressed by these queries. In the scheme of S. 163A there is no place for words like "innocent" and "offending". Even the use of the terminology betrays a want of commitment to the laudable goals of the statutory provisions under S. 163A and its very scheme. The statutory concern is only that the victims must be compensated. To

ensure that, the option must be and has been conceded to the claimant. He is the best judge to decide what would ensure payment to him. He can and has hence been conceded the option.

27. Going by the purpose that S. 163A has to achieve, the argument that the singular expressions in a statute take in the plural also and hence all the owners/insurers are together covered by the expression "the owner of the vehicle or authorised insurer" in S. 163A cannot be accepted. The further argument that the liability hence rests on all the owners/insurers equally cannot be accepted. The language of S. 163A and the purpose that it has to serve does not persuade or permit us to accept such an interpretation.

28. If the primary accent under S. 163A is to provide a social security scheme, we are satisfied that the option must be given to the target group of the beneficent provision to stake the claim against any of the owners/insurers who is made liable under S. 163A. The liability under S. 163A appears to be a joint and separable liability. Either or both (or any or all) who have been saddled with the liability under S. 163A can be proceeded against by a claimant at his option under S. 163A of the M.V. Act.

29. It is not as though the concept is alien to the law. In the case of joint and several liability in tort option is given to the claimant to proceed against either or both the tortfeasors. Reference to page 171 in the Law of Torts by Ratanlal and Dhirajlal, 21st Edition may in this context be relevant. We extract the relevant portion below:

Joint tortfeasors are jointly and severally, liable for the damages caused from the tort. They may be sued jointly or separately. If sued jointly damages may be levied from all or either. Each is responsible for the injury sustained by his common act.

It a suit for composite negligence plaintiff is not entitled to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damages, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover full amount of damages from any of the defendants.

(emphasis supplied)

30. If that can be the case of tortious liability, we find it absolutely safe to come to the conclusion that the same principle must apply in a claim under S. 163A of the M.V. Act. The legislature has advisedly and very cautiously not limited the option of the claimant when he stakes a claim under S. 163A of the M.V. Act. He is not obliged to claim against both (or all) the insurers/owners. It is open to the claimant to choose the person from whom he should stake and recover the claim.

31. There can be many a reason which can prompt the claimant to choose to

proceed against one of the many persons liable under S. 163A of the M.V. Act. Where two vehicles are involved in the accident and one of them is not covered by a valid policy of insurance, that is an eminently acceptable reason as to why the claimant should choose to stake the claim against the owner/insurer of one vehicle and not the other. There may also be instances like the one that presented itself in *Ningamma and Another Vs. United India Insurance Co. Ltd.*, where the insurer of one of the vehicles may be entitled to claim absolution from liability under S. 163A of the M.V. Act. If the purpose to be achieved by the statutory provision is a social security scheme, the accent must be to ensure that the claimant gets the amount under such social security scheme without dispute and at the earliest. If that be so, certainly our conclusion that the claim can be staked against either or both at the option of the claimant must be held to be sound.

32. The learned counsel for the insurance company contends that at least to decide the inter se disputes between the owners/insurers of the vehicles involved in the accident, the responsibility for the accident can be attempted to be ascertained. The learned counsel argues that in that event either can be directed to satisfy the award or to the extent of the responsibility for the accident. Recovery from the other can also be ordered. In short, the contention is that to decide the inter se disputes between the owners/insurers of the vehicles involved, the question of negligence can be looked into.

33. We are unable to accept this contention. In *National Insurance Co. Ltd. Vs. Malathi C. Salian*, the Full Bench has taken the view that the question of negligence is irrelevant, alien and foreign to a claim under S. 163A of the M.V. Act. A Division Bench of this Court later in *New India Assurance Co. Ltd. Vs. Vappu*, considered the very same question again and observed thus in paragraph 2 of that judgment:

So, S. 163A(2) envisages a situation where more than one vehicle is involved in the accident and it is stipulated even in such cases, the question of negligence need not be considered by the Tribunal. When it is so, it will be against the spirit of S. 163A, a finding is entered into on the question of negligence so as to resolve any dispute that may arise inter se between the respondents. We are of the view that S. 163A totally prohibits a question of finding on negligence so far as a claim preferred by the injured or the legal representatives of a deceased is concerned.

The Division Bench proceeded to conclude in paragraph 3 of the said judgment that:

Therefore if an issue is raised in order to determine the inter se dispute then also it will be time consuming and it will be defeating the object of the enactment.

34. It therefore is evident that even to decide inter se disputes between the owners/ insurers of the vehicles involved in a S. 163A claim, the Tribunal should not embark on an attempt to identify the responsibility for the accident. If that

were permitted, it would go against the very grain of the liability created under S. 163A of the M.V. Act.

35. The learned counsel for the appellant/insurance company contends that another Division Bench of this Court in *Manager v. Zuhra* (2010 (2) KHC 536 (D.B.)) has taken the view that the insurers of both vehicles can be directed to share the liability on equal basis. It is argued that the court in that decision in paragraph-6 had attempted to ascertain the extent of negligence of both vehicles.

36. The facts of *Zuhra* (supra) are totally different. A claim was staked against both insurers by the claimant in that case. It is in that context - in a claim by the claimant against both insurers that a direction was issued that both can be made equally liable and directed to pay 50% of the compensation amount. To us, it appears that *Zuhra* (supra) was a case where the claimant chose to press the claim not against one of the insurers; but against the insurers of both vehicles. The view which we take - that the claimant has the option to stake claim against either or both the owners of the vehicles is not in any way detracted against by the judgment in *Zuhra* (supra). Of course, in the light of the decisions in *Malathi C. Salian* (supra) and *Vappu* (supra), it is totally unnecessary to attempt to apportion the blame for the accident between the owners of the vehicle. The course adopted in paragraph 6 by the Division Bench - the attempt to ascertain the extent of negligence of the two vehicles, does not appear to be permissible in the light of *Malathi C. Salian* (supra) and *Vappu* (supra). In *Zuhra* (supra), in accordance with the claim, both insurers were made equally liable. That is all.

37. The above discussions lead us to the conclusion that notwithstanding the different semantics employed by the legislature in Ss.140 and 163A of the M.V. Act, in a claim under S. 163A of the M.V. Act also, the claimant has the unfettered option/choice to stake his claim against either or both (any or all) the owners/insurers of the vehicles involved in the accident. The dictum in *Madhavan* (supra) therefore does not, according to us, require re-consideration.

38. We now come to the challenge raised by the appellant in M.A.C.A. No. 1248/09. He claimed that he was a workshop mechanic earning an income of Rs. 3,000/- per mensem. The accident had taken place on 5.8.1999. He had suffered permanent disability. The extent of disability was assessed by P.W. 1 - Doctor in Ext. A9 disability certificate to be 50%. He had suffered Type III open fracture left femoral shaft with vascular compromise, fracture of left tibia, fracture of left patella, fracture of humerus left and laceration left ear and face with head injury. In Ext. A9 disability certificate, the details of the physical disability suffered are given in detail. Opinion is expressed that the total physical disability is 50%. The Tribunal, against a total claim of Rs. 6,46,000/-, proceeded to award a total amount of Rs. 1,46,800/- as per the details given in paragraph 14 of the impugned award which we extract below:

1.

Loss of earnings

(Rs. 3,000/- x 6 = Rs. 18,000/- minus " Rs. 12,000/-) -

-

Rs. 6,000/-

2.

Disability under Clause (5)

(Rs. 3,000/- x 12 x 16 x 45/100 =

Rs. 2,59,200/- minus Rs. 1,15,200/-)

-

Rs. 1,44,000/-

Total

-

Rs. 1,50,000/-

39. We have heard the learned counsel for the appellant and the learned counsel for the insurance company. Challenge is directed against the quantum of compensation alone in this appeal. First of all, the learned counsel for the appellant contends that the Tribunal erred grossly in reckoning only Rs. 2,000/- as the monthly income. The claim of the appellant that his monthly income was Rs. 3,000/- ought to have been accepted by the Tribunal, it is contended. The learned counsel for the appellant relies on the presumption available under Clause (6) of the Second Schedule to the M.V. Act in respect of even non-earning persons. The learned counsel for the appellant further brings to our notice the precedents in *Lata Wadhwa and Others Vs. State of Bihar and Others*, and *Laxmi Devi and Others Vs. Mohammad Tabbar and Another*, where under the Supreme Court has held that even for a non-earning home maker and an unskilled manual worker, Rs. 3,000/- can safely be reckoned as the monthly income. The accident in this case had taken place in 1999 - 5 years after the presumption under Clause (6) was introduced. The appellant is shown to be a skilled workshop mechanic. We are satisfied, in these circumstances, that Rs. 3,000/- per mensem can safely be reckoned as the monthly income.

40. Under the Second Schedule to the M.V. Act loss of earnings can be given for the actual period of disablement not exceeding 52 weeks. The Tribunal in this case has accepted 6 months to be the period of involuntary unemployment. Taking note of the nature of the injuries suffered and the consequences, we find the said assumption made by the Tribunal to be absolutely reasonable. Expenses for treatment and compensation for pain and suffering has been awarded by the Tribunal strictly in terms of Clauses (4)(i) and 4(ii) of the Second Schedule to the M.V. Act.

41. We now come to the quantum of compensation awarded for permanent disability. There is no dispute regarding the multiplier taken by the Tribunal. The dispute is only regarding the extent of permanent disablement. The Explanation to S. 163A(1) makes it clear that the meaning and extent of permanent disablement has to be gathered from the Workmen's Compensation Act. Clause (5) of the Second Schedule to the M.V. Act further declares that the stipulation in Schedule I to the Workmen's Compensation Act are to be followed by the Tribunal. We have to first ascertain whether the injury in the instant case is a scheduled injury. It is not disputed that the injury in the instant case is not a scheduled injury. It does not fall under any of the specified injuries in Part I or Part II of the First Schedule to the Workmen's Compensation Act. The extent of permanent physical disablement will hence have to be ascertained by following the mandate of S. 4(1)(c)(ii) which we extract below:

4. Amount of compensation.-- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

xxxxxx

xxxxxx

(c) Where permanent partial disablement result from the injury:

(i) xxxxxx

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

In respect of anon-scheduled injury, the extent of permanent disablement (i.e., the loss of earning capacity) will have to be assessed by a qualified Medical Practitioner. In the instant case P.W. 1 under Ext.A9 has assessed the physical disability to be 50%. What is relevant in a claim under the Workmen's Compensation Act and consequently under S. 163A of the M.V. Act is the extent of personal disablement as defined in S. 2(g) and 2(1) of the Workmen's Compensation Act i.e., the extent of reduction in earning capacity. Though we have evidence to show that the physical disability of 50% has resulted, in the evidence of P.W. 1 and Ext.A9, the precise evaluation of reduction in earning capacity is not made. But that cannot persuade a Tribunal to throw its hands up in helplessness. The Tribunal rightly even in the absence of any specific evidence attempted to quantify the extent of reduction in earning capacity. The Tribunal held the extent of reduction in earning capacity to be 30%.

42. The appellant claims to be aggrieved by the said assessment of extent of reduction in earning capacity by the Tribunal. We have been taken through the oral evidence of P.W. 1 and the meticulous details furnished in Ext.A9 disability certificate. We do take note of the distinction/difference in the concepts of physical disability and reduction in earning capacity. The burden must always rest

on the shoulders of the claimant to prove the precise requirement i.e., the extent of reduction in earning capacity. But even in the absence of better evidence, we feel persuaded to agree, going by the evidence of P.W. 1 and Ext.A9, that the claimant, a workshop mechanic, must have suffered permanent disablement (reduction in earning capacity) at least to the extent of 45%. That conclusion appears to be absolutely reasonable to us.

43. The above discussions lead us to the conclusion that the appellant/claimant is entitled to a further amount of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) as shown below in addition to the amount already awarded by the Tribunal:

1.

Loss of earnings

(Rs. 3,000/- x 6 = Rs. 18,000/- minus " Rs. 12,000/-)-

-

Rs. 6,000/-

2.

Disability under Clause (5)

(Rs. 3,000/- x 12 x 16 x 45/100 =

Rs. 2,59,200/- minus Rs. 1,15,200/-)

-

Rs. 1,44,000/-

Total

-

Rs. 1,50,000/-

44. We are not persuaded to interfere with the amount awarded under any other head.

45. In the result:

(a) M.A.C.A. Nos. 2414, 2467 & 2470 of 2008 are dismissed.

(b) M.A.C.A. No. 1248 of 2009 is allowed in part.

(c) The appellant in M.A.C.A. No. 1248/09 is found entitled to receive a further amount of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) as compensation in addition to the amount already awarded by the Tribunal in the impugned award.

(d) All other directions of the Tribunal are upheld.