Motor Accident Claim Petitions

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1. **Second schedule only directory for determining compensation:** Interpreting Sec. 166 of the MV Act, 1988, the Supreme Court has held that the second schedule of Sec. 166 of the MV Act, 1988 may serve as a guide but cannot be used as an invariable ready reckoner for arriving at a just compensation. See:
   (i) Syed Basheer Ahamed vs. Mohd. Jameel, (2009) 1 Supreme 266
   (ii) Managing Director TNSTC Ltd. vs. K.I. Bindu, 2005 (8) SCC 473
2. **When no compensation u/s 166 asked in the pleadings**: Section 166 deals with "just Compensation" and even if in the pleadings no specific claim was made u/s. 166 a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the M.V. Act is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the Insurance Policy and whether or not the provisions of Sec. 147 of the Act would be applicable in the instant case and also whether or not there was rash and negligent driving on the part of the deceased, who was driving the vehicle borrowed from the real owner, are essentially a matter of fact which was required to be considered and answered at least by the High Court. See: Ningamma vs. UIIC Ltd., AIR 2009 SC 3056

4. Compensation & steps to be followed for its determination: The Supreme Court has directed following steps to be followed by Tribunals for determination of amount of compensation u/s. 168 of the MV Act, 1988:

(i) Ascertaining the multiplicand

(ii) Ascertaining the multiplier

(iii) Actual calculation

(iv) Addition of conventional amount like loss of consortium & loss of estate etc.

(v) Funeral expenses & the cost of transportation of the body etc. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

5. Court/Tribunal can award compensation beyond what was claimed in the petition: Court/Tribunal can award compensation beyond what was claimed in the petition u/s 168 of the MV Act, 1988 particularly towards the heads like "future treatment" "pain & suffering and mental agony" etc. See:

(i). Kajal Vs. Jagdish Chand, (2020) 4 SCC 413

(ii) Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench).

(iii) Nagappa Vs. Gurudayal Singh, (2003) 2 SCC 274.

6. Formula provided in Second Scheduled of Sec. 163-A has now become redundant, irrational & unworkable: Keeping in view the cost of living, the Central Government is required to amend the Second Schedule (see Section 163-A(3)). The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14th November, 1994. Now more than 19 years have passed but no amendment has been made. Cost of living has gone up mani-fold. …In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. …..The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A (3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport and Highways to make the proper

amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/-(rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988. See: Puttamma Vs. K.L. Narayana Reddy, AIR 2014 SC 706 *(paras 52, 53 & 56).*

4(A-2).How to ascertain multiplier as provided in Sarla Verma Vs DTC, (2009) 6 SCC 121 : In cases where age of deceased is less than 15 years, irrespective of whether claim is u/s 166 or Section 163-A, multiplier of 15 & assessment as indicated in schedule II subject to correction as pointed out in column (6) of Table in Sarla Verma Vs DTC, (2009) 6 SCC 121 must be followed. But in all other cases pertaining to claim u/s 166 i.e. where age of deceased is 15 years or above multiplier as indicated in column (4) of Table in Sarla Verma case r/w para 42 of that judgment must be followed. Thus in respect of claim u/s 166 in fatal accident cases where age of deceased is above 15 years, there is no necessity to seek guidance or for placing reliance on schedule II to MV Act, 1988. See : Reshma Kumari Vs Madan Mohan, (2013) 9 SCC 65 (Three-Judge Bench).

4(A-3). Age of deceased to be treated as 45 years when shown as 45 years 5 months and 28 days : Age of deceased to be treated as 45 years when shown as 45 years 5 months and 28 days. **See** : Shahsikala Vs. Gangalakshmamma, (2015) 9 SCC 150.

4(B). Ascertaining the multiplicand: The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance which is considered to be the contribution to the dependent family, constitutes the multiplicand. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

4(C). Ascertaining the multiplier: Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderable in life and economic factors, a table of multipliers with reference to the age has been identified by Supreme Court. The multiplier should be chosen from the said table with reference to the age of the deceased. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

4(D).Multiplier as provided u/s 163-A Schedule 2nd not to be deviated from: Deviation from the multiplier as provided under the 2nd schedule to Sec 163-A of the MV Act,1988 is not permissible unless special reason therefor is indicated. See: Swaran Lata Vs. Ram Chet,(2007) 15 SCC 650.

4(E). Multiplier of 15 proper in case in claimant suffering 100% disability : Where the claimant aged 25 years had suffered 100% disability in Motor Accident, it has been held by a Three-Judge Bench of the Hon'ble Supreme Court that the appropriate multiplier would be 17 and not 15 for calculating compensation u/s 168 of the MV Act, 1988. See : Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench)

4(F). Actual calculation: The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

4(G). Multiplier in the case of bachelor deceased : Where the deceased was a bachelor, the Supreme Court held that age of the deceased and not the age of

dependents would be the factor for purpose of applying multiplier while determining the compensation u/s 166 of the M.V. Act, 1988. See:

(i) M/S Royal Sundaram Alliance Insurance Company Limited Vs. Mandla Yadagari Gaud, AIR 2019 SC 1825 (Three- Judge Bench).

(ii) National Insurance Company Limited Vs. Pranay Sethi, AIR 2017 SC 5157 (Five- Judge Bench).

(iii) Sube Singh Vs. Shyam, Singh, (2018) 3 SCC 18.

5(A). Addition of conventional amount like loss of consortium & loss of estate etc.: A conventional amount in the range of Rs. 5000/- to Rs. 10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs. 5000/- to Rs. 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

5(B). Funeral expenses etc.: The funeral expenses, cost of transportation of body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

2-A. Determination of amount of compensation: The expression "which appears to be just" used in Sec. 168 of the MV Act, 1988 vests a wide discretion in the tribunal in the matter of determination of compensation. Nevertheless, it does not empower the tribunal to ignore settled principles relating thereto. See:

(i) Syed Basheer Ahamed vs. Mohd. Jameel, (2009) 1 Supreme 266

(ii) General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.), 1994 (2) SCC 176

2-B. One third deduction of personal & living expenses in the case of married deceased: Deduction towards personal and living expenses of a married deceased should be one third in determining the amount of compensation u/s. 168 of the M.V. Act, 1988. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

2(C). Heads of compensation u/s 168: In the case of permanent partial disability, non-pecuniary heads under which compensation is to be granted are as under :

(i) Damages for mental and physical sock, pain and suffering already undergone/likely to be undergone in future.

(ii) Damages for loss of amenities of life on account of injury

(iii) Damages for loss of expectations of life, in convenience, hardship, discomfort, disappointment, frustration and mental stress in life. See : Rekha Jain Vs. NIC Limited, (2013) 8 SCC 389

2(D). "Pain & suffering" and "future treatment" are two different heads and cannot be clubbed together while computing compensation u/s 168 : "Pain & suffering" and "future treatment" are two different heads and cannot be clubbed together while computing compensation u/s 168. See**:** Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench).

2(E). Cost of attendant to be awarded u/s 168 in case of permanent disability : Where the claimant aged 25 years had suffered 100% disability in motor accident, was paralyzed for life and requiring assistance for daily chores at all time, it has been held that the claimant was entitled u/s 168 to additional Rs. two lacs towards cost of attendant for his assistance. See**:** Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench).

2 (F). Tribunal/Court have power u/s 168 to award more compensation than claimed: u/s 168 of the Motor Vehicles Act, 1988, the Tribunals or Courts have power to award compensation in excess of amount claimed in the petition. See:

(i) Ramla Vs. National Insurance Company Limited & Others, AIR 2019 SC 404.

(ii) Magma General Insurance Vs. Nanu Ram, (2018) SCC Online SC 1546.

3. Onus of proving earnings of the deceased on claimants: As regards the earnings of the deceased, onus lies on the claimants to prove the same. See: Syed Basheer Ahamed vs. Mohd. Jameel, (2009) 1 Supreme 266

4. Pillion rider & compensation: In the event of an accidental death of a pillion rider of a scooter, being a gratuitous passenger, the insurance company would

not be liable to pay compensation. See: General Manager, United Insurance Co. Ltd. vs. M. Laxmi, AIR 2009 SC 626

5. Driving Licence: Driving Licence & its relevance: Once it is proved by the assured (owner) that accident is covered by compulsory insurance clause, then it is for insurer to prove that it comes within an exception. See: National Insurance Co. Ltd. vs. Swaran Singh, 2004 AICC 275 (SC) (Three- Judge Bench).

(AA). Insurer's liability for compensation to third party (victim of accident) even in the case of breach of condition of insurance policy: Insurer has to pay compensation to third party (victim of accident) even when there has been breach of condition of insurance policy. The insurer may proceed against the insured for recovery of amount paid in such an event. See: S. Iyyapan Vs. United India Insurance Company Ltd., (2013) 7 SCC 62.

(B) Fake driving licence when case relates to own damages & third party risk:

(a) Fake D.L.: Renewal cannot cure fatality inherent in fake D.L.—once initial burden on insurer to show that the D.L. is fake is satisfied, natural consequences have to flow.

(b) The logic of fake D.L. has to be considered differently in respect of third party and in respect of own damage claim. The decision in NIC Ltd. vs. Swaran Singh, (2004) 3 SCC 297 has no application to own damage case.

(c) Initially the burden is on the insurer to prove that the D.L. is fake one, once it is proved, the natural consequences have to flow.

(d) As held by Supreme Court in Laxmi Narain Dhut's case:

(i) The decision in Swaran Singh's case has no application to cases other than third party risks.

(ii) Where originally the D.L. was fake one, renewal cannot cure the inherent fatality.

(iii) In case of third party risk, the insurer has indemnify the amount and if so advised, to recover the same from the insured.

(iv) The concept of purposive interpretation has no application to cases relatable to Sec. 149 of the Act. See: NIC Ltd. vs. Laxmi Narain Dhut, AIR 2007 SC 1563

(C) **When No Driving Licence:** Insurance Co. cannot shake off it's liability to pay compensation only by saying that at relevant point of time, vehicle was driven by a person having no D.L. If insurance company is made liable to pay any amount, it can recover the entire amount paid to third party on behalf of assured. Tribunal has power to direct them to satisfy decree at first instance and then direct recovery of same from the owner. See: National Insurance Co. Ltd. vs. Swaran Singh, 2004 AICC 275 (SC) (Three- Judge Bench)

(D) **Learner's Licence [Sec.4(3), 7(2), 10(3) & 14]:**A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot be said that a person holding learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding learner's licence, the same would run counter to the provisions of Sec. 149(2) of the Act. Insurer Co. cannot avoid liability to pay compensation due to learner's licence. See: National Insurance Co. Ltd. vs. Swaran Singh, 2004 AICC 275 (SC) (Three- Judge Bench)

(E) **Licence to drive one type of vehicle but different type of vehicle driven:** In each case, a decision has to be taken by the tribunal on the basis of evidence led whether the fact of Driver possessing licence for one type of vehicle but found driving another type of vehicle was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid it's liability merely for technical breach of conditions concerning D.L. Minor breaches of licence conditions such as want Medical Fitness Certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of the vehicle. Such

minor and inconsequential breaches/deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties, Tribunal may, to avoid delay in adjudication of the claim, may relegate the insurer to see it's remedy of reimbursement from the insured in the civil court. See: National Insurance Co. Ltd. vs. Swaran Singh, 2004 AICC 275 (SC) (Three- Judge Bench)

(F) Age of Driver & Medical Fitness Certificate: In each case, a decision has to be taken by the tribunal on the basis of evidence led whether the fact of Driver possessing licence for one type of vehicle but found driving another type of vehicle was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid it's liability merely for technical breach of conditions concerning D.L. Minor breaches of licence conditions such as want Medical Fitness Certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of the vehicle. Such minor and inconsequential breaches/deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties, Tribunal may, to avoid delay in adjudication of the claim, may relegate the insurer to see it's remedy of reimbursement from the insured in the civil court. See: National Insurance Co. Ltd. vs. Swaran Singh, 2004 AICC 275 (SC) (Three- Judge Bench)

(G) Fake or invalid licence: Mere fake or invalid D.L. or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurers against either the insured or the third parties. To avoid it's liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

U/s. 15, 149(2)(a)(ii) & 149(5) of the M.V. Act, 1988, fake D.L. unwittingly renewed by Licensing Authority does not acquire legal validity thereby, it remains a counterfeit document. Insurance Co. would be entitled to recover compensation paid to third party accident victims or their heirs from insured whose driver had at time of accident a fake D.L. renewed u/s.15. When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on insurer to pay to the third parties, whether as not there has been breach or violation of the policy conditions. But the amount so paid by the insurer to the third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured. The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid D.L. If the insurance Co. succeeds in establishing that there was breach of policy conditions, the claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person. U/s. 149 of the M.V. Act, 1988, insurer not absolved of liability unless proved that the owner was aware of or noticed that D.L. was fake and still permitted the driver to drive. See: In each case, a decision has to be taken by the tribunal on the basis of evidence led whether the fact of Driver possessing licence for one type of vehicle but found driving another type of vehicle was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid it’s liability merely for technical breach of conditions concerning D.L. Minor breaches of licence conditions such as want Medical Fitness Certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches

of inconsequential deviation in the matter of use of the vehicle. Such minor and inconsequential breaches/deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties, Tribunal may, to avoid delay in adjudication of the claim, may relegate the insurer to see it's remedy of reimbursement from the insured in the civil court. See:

(i) National Insurance Co. Ltd. vs.

(ii) Singh, 2004 AICC 275 (SC) (Three Judge Bench)

(iii) New India Assurance Co. Shimla vs. Kamla, (2001) 4 SCC 342

(iv) Prem Kumari vs. Prahlad Dev, AIR 2008 SC 1073

(H) No Valid Licence (Sec. 149(2)(a)(ii): Vehicle (Maruti Van) damaged due to accidental fire caught during driving due to mechanical reasons and no due to any fault of the driver. Company not empowered to repudiate (reject or disown) the claim for damages incurred due to reasons other than the act of the driver. Insurance Co. could not have repudiated the claim of the appellant (owner) solely on the ground that the driver did not have a valid D.L. at the time of the incident in question.

Note: The owner had challenged the decision of the National Consumer Disputes Redressal Commission, New Delhi. Supreme Court restored the decision of the District Consumer Forum which had held the company liable.

U/s. 149, 15—Liability of insurer, defence that driver did not have valid licence has to be established on facts of case. Award directing insurer to pay compensation to claimant with liberty to recover it from insured/driver by establishing it's case. U/s. 147, 149 of the Act, where the vehicle was driven by a person not holding valid D.L., the Insurance Co. would not be liable. See:

(i) Jitendra Kumar vs. OIC Co. Ltd., (2003) 6 SCC 420

(ii) Ishwar Chandra vs. OIC Ltd., AIR 2007 SC 1445

(iii) Sardari vs. Sushil Kumar, 2008(2) Supreme 451

(I) Non renewal of Driving Licence & its effect?: Where driving licence of the deceased of car accident had expired four months prior to the date of accident and the claimant had not claimed that the driver had applied for renewal of the D.L. within 30 days, it has been held that since the deceased had no valid and effective D.L. on the

date of accident, the insurer is not liable to indemnify the claimant. See: NIAC Limited vs. Suresh Chandra Aggarwal, AIR 2009 SC 2987

(J) Certified copy of Driving Licence vis-a-vis Letter of RTO Stating the DL as fake & its probative value: Letter of RTO not being a certificate or a certified copy in form 54, cannot be relied unless witness is examined in its support and the DL shuld be held valid and insurance company should be held liable. See: O.I.C. Ltd. vs. Poonam Kesarwani, 2010 ACJ 1992 (All)(DB)

(K) Photostat copy of driving license when challenged?: Where in a Motor Accident Claim the genuineness of the photostat copy of the driving licence was not admitted and the same was challenged, it has been held that mere production of photocopy of the driving licence is not sufficient to prove that the driver had a valid driving licence. See: U I I C Ltd. Vs. Anbari, 2000 ACJ 469 (SC)

13. Driver's Impleadment: (A) Under general principles, driver ought to be impleaded before an adjudication is claimed u/s. 166 of the 1988 Act, especially when there may be some controversy asto whether it was the deceased or the alleged driver who was actually driving the vehicle at the time of the accident.

Motor Vehicle Act, 1988, Sec. 166, CPC, 1908, O. 1, r. 10, Karnataka Motor Vehicle Rules, 1989, rule 235, claim petition, impleadment of party/necessary party, collision between bus and truck. Two sets of claim cases were filed by injured parties, one by passengers of bus and other by driver of bus. Finding of negligence on part of bus driver in first set of claim cases, bus driver was examined in forms claims even though he was not formally impleaded. Natural justice would mandate involvement of bus driver in proceedings in view of adverse finding of negligence against him. He should be made 'party' to the proceeding. See:

(i) OIC Ltd. vs. Meena Variyal, (2007) 5 SCC 428

(ii) Machindranath Kernath Kasar vs. D.S. Mylarappa, AIR 2008 SC 2545

(B) In a claim petition filed u/s 166 of the MV Act 1988 claimant has to prove that driver was negligent in driving the vehicle resulting in accident. Under general principles driver is expected to be impleaded. Driver is a necessary party in a claim u/s 166 of the Act. See: OIC Ltd. Vs. Meena Variyal, 2007 ACJ 1284 (SC)

14. Child Death Compensation:

(1). New India Assurance Co. Ltd. vs. Satender, AIR 2007 SC 324, Child aged 9 years, death due to motor accident, determination of compensation is extremely difficult task. Relevant factors when parents are claimants, is age of parents, compensation to be awarded must be "just", should not be bonanza. Rs. 1,80,000/- awarded as compensation. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendors of stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a CHILD and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning. Nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer, the figure of compensation in such cases involves a good deal of guess work. In cases, where parents are claimants, relevant factor would be age of parents. In case of death of an infant, there may have been no actual pecuniary benefit derived by it's parents during the child's lifetime. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived.

(2). State of Haryana vs. Jasbir Kaur, (2003) 7 SCC 484, wherein it has been held—It has to be kept in mind that the tribunal constituted under the Act as provided in Sec. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in term appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that compensation must be "just" and it cannot be a bonanza, not a source of profit, but the same should not be a pittance. The courts and tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just. What would be "just" compensation is a vexed question. There can be no

golden rule applicable to all cases for measuring the value of human life or limb. Measure of damage cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just" a wide discretion is vested in the tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, the expression "just" denotes equitability, fairness and reasonableness and non-arbitrary. If it is not so it cannot be just.

(3). Lata Wadhwa vs. State of Bihar, (2001) 8 SCC 197, Case while computing compensation, distinction has been made by Supreme Court between the deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

(4). Kaushalya Devi cs. Karan Arora, AIR 2007 SC 1912, U/s. 168 of MV Act, 1988, child death aged 14 years in motor accident, assessment of income on estimated basis cannot be done due to uncertainties with regard to academic pursuits, achievements in career. Award of Rs. 1,00,000/- (one lac) made by Tribunal held proper by Supreme Court. Moreso, when father had died and only mother was alive.

(5). OIC Ltd. vs. Syed Ibrahim, AIR 2008 SC 103, U/s. 168 of MV Act, 1988, child death due to dash by lorry, award of Rs. 51,500/- given as compensation by tribunal. Age of child was 7 years. Award, held by Supreme Court, proper and not liable to be interfered with.

15. (A) Legal Representatives to deceased injured can continue claim proceedings:

(A) Who can file claim petition?

(B) Widow—even after remarriage can file MACP

(C) Dependency: Not required

15.2 Legal representatives of injured can continue proceedings after his death during pendency of claim petition: Legal representatives of injured can continue proceedings after his death during pendency of claim petition: See:

(i) Meena Vs. Prayagraj, (2025) 9 SCC 28 (Paras 4 & 5)

(ii) Oriental Insurance CO. Vs. Kahlon, (2022) 13 SCC 494

15.3 Legal representatives can file claim petition: Section 166 of MV Act, 1988 provides that any of the LRs can file the claim petition. Widow even after remarriage continues to be the LR of her husband as there is no provision under the Hindu Succession Act or any other law which lays down that she does not continues to be the LR. The right of succession accrues immediately on the death of husband and in the absence of any provision she cannot be divested from the property vested in her due to remarriage. Married daughter of deceased, though not dependant on deceased is L.R. and can file claim petition for compensation. Irrespective of non-dependency on deceased, compensation amount cannot be less than what has been provided u/s. 140. See:

(i) Smt. Vimla vs. Dinesh Kr. Sharma, AIR 2007 M.P. 47 (D.B.)

(ii) Smt. Manjuri Bera vs. OIC Ltd., AIR 2007 SC 1474

16. Claim for amount of compensation by the L.R. to the deceased claimant: No succession certificate is required: Under Sections 370 to 390 of the Indian Succession Act, 1925, succession certificate is not required in case of compensation sanctioned on account of death (of employee in the course of duty in Kuwait in this case). Under the Act, succession certificate can be granted only in respect of “debt” or “securities” to which the deceased was entitled. Compensation is not such an asset belonging to the deceased. High Court erred in directing the family members (widow, mother and others) of deceased seeking disbursement of compensation amount (Rs. 18,83,385) to produce succession certificate before the court hearing the claims. Court need only decide who the LRs are not the share each is entitled to on the basis of the personal law applicable. See:

(i) Rukhsana (Smt.) vs. Nazrunniza, (2000)9 SCC 240

(ii) Ram Kali vs. State of U.P., 2006 (65) ALR 236 (All)

(iii) Resilikutty Chacko vs. State of Kerala, AIR 1999 Kerala 56

17(A). Future prospects of increase in income of self- employed person: Where the claimant aged 25 years had suffered 100% disability in motor accident and was having wife and 18 months old child and was earning Rs. 41,300/- annually, it has been held by a Three-Judge Bench of the Hon'ble Supreme Court that the claimant though self-employed person but he was still entitled to 15% increase to the income that he was earning at the time of accident. See**:**

(i) Shashikala Vs. Ganga Lakshmamma, (2015) 9 SCC 150.

(ii) Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench).

Note : *The case of Shashikala has been referred to larger Bench as there was conflict in two three-Judge Benches in the case of Reshma Kumari Vs. Madan Mohan, (2013) 9 SCC 65 and Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54.*

17(B). Salary & determination of compensation of salaried person: Since the Supreme Court in Para *33(d*) intended to follow the principle regarding addition to be made to actual income of the deceased existing at the time of his death towards his future prospects in the case of salaried persons as laid down in *Sarla Verma, (2009) 6 SCC 121*, and to make it applicable also to the persons self-employed and engaged on fixed wages, it is clarified that the increase in the case of those groups (i.e. persons self-employed and engaged on fixed wages) is not 30% always, it will also have a reference to the age. In other words, in the case of self-employed persons or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years. In *Sarla Verma* case it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of those self-employed or on fixed wages, where there is normally no age of superannuation, it is opined that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no

addition thereafter. See: Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54 (Three-Judge Bench) (Paras 8 & 9).

17(C). Salaried deceased below 40 years having permanent job: 50% of actual salary should be added to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104.

17(D). Determination of compensation where deceased was self-employed with fixed salary without provision for annual increments : Reiterating the view taken by the Supreme Court in the case of Sarla Verma Vs. DTC, (2009) 6 SCC 121, a Three-Judge Bench of the Hon'ble Supreme Court, in the case of Reshma Kumari Vs. Madan Mohan, (2013) 9 SCC 65 (Three-Judge Bench), has held that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed, the actual income at the time of death should be taken into account for determining the loss of income unless there are extra ordinary and exceptional circumstances. See: Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench) (Para 15).

17(E). Pay scale & its revision subsequent to the death of the deceased: Revision in pay scale subsequent to the death and before final hearing cannot be taken note of for purpose of determining income u/s. 168 of the M.V. Act, 1988. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

18(A). GPF, LIC, Repayment of loan not to be excluded from income but income tax to be excluded: GPF, LIC, repayment of loan should not be excluded from income but income tax should be excluded. See: Shyamwati vs. Karam Singh, 2010 ACJ 1968 (SC)

18(B). Payment of income tax when to be disbelieved for determining compensation: Where the claimant aged 25 years had suffered 100% disability in motor accident and was having wife and 18 months old child and was earning Rs. 41,300/- annually and had claimed that he had paid income tax on his said annual income, it has been held by a Three-Judge Bench of the Hon'ble Supreme Court that no fault can be found with the order of High Court which proceeded on that basis and not monthly income of Rs. 5,000/- as claimed by the claimant. See**:** Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 (Three-Judge Bench).

18(C). DA & HRA whether income ?: DA & HRA is paid to an employee for the benefit of family members and not for the employee alone and therefore HRA and DA should be included for determining income of deceased. See:

(i) Raghuvir Singh Matolya Vs. Hari Singh Malviya, (2009) 15 SCC 363.

(ii) National Insurance Co.Ltd. Vs. Indira Srivastava, (2008) 2 SCC 763.

19(A). Procedure for summoning of salary documents : Income of victim of accident, salary not only pay packet but perks which are beneficial to his family must be considered. See: Asha vs. UIIC Ltd., 2004 (1) ACC 533 (SC)

19(B). Documents & the power of Tribunals to direct production thereof in respect of employee of private sector: Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the MV Act, 1988 which stands in the way of the tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the MV Act vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable.

The Tribunal, in this case has chosen to merely go by the verbal evidence of the widow when without any difficulty, the claimants could have got the employer company of the deceased to produce the relevant documents to show the income that was being derived by the deceased from the employer. See: OIC Ltd. vs. Meena Variyal, (2007) 5 SCC 428

Note: In this case the deceased was an employee in a Private Ltd. Company but his salary certificate or documents showing monthly salary were not produced and only verbal evidence was adduced regarding income from salary.

19(C-1).**Monthly income and its assessment:** Existing standard of living of deceased's family and attendant circumstances can be the basis for determining income in the absence of documentary evidence of income. Preserving existing standard of living of deceased's family is a fundamental endeavor of motor accident compensation law. See: Kirti Vs Oriental Insurance Company, (2021) 2SCC 166 (Three-Judge Bench)

19(C-2). Monthly salary of a deceased engaged in private employment to be computed as per Minimum Wages Act, 1948 : Even in absence of salary slip/certificate, the amount of compensation of a deceased engaged in private employment or self employment should be made on the basis of his monthly salary in view of Minimum Wages Act, 1948 Notification wherein the State has fixed minimum wage of the private employee(in this case a carpenter). See: Neeta Vs. Maharashtra S.R.T.C. (2015) 3 SCC 590.

19(D). Compensation to be determined on the basis of salary certificate: Where the deceased was working in a foreign country, the Supreme Court has held that determination of amount of compensation u/s 168 of the M.V. Act, 1988 should be computed on the basis of the salary certificate of the deceased. See: Ramla Vs National Insurance Company Limited, (2019) 2 SCC 192

19. Overloaded vehicles with passengers- when involved in accident and calculation of compensation: Under Section 147(1)(b)(ii), 149 of the MV Act, 1988, overloaded stage carriage involved in accident, liability of insurer Co. would be limited to only number of passengers permitted to be carried in vehicle

and even Sec. 149 cannot bind insurer to pay amount outside contract of insurance. See: NIC Ltd. vs. Anjana Shyam, AIR 2007 SC 2870

Note: Mode of calculation of amount of compensation has been given in this ruling.

20(a). No dismissal in default/fraud: Under Section 169(1) r/w rule 206, UP MV Rules,1988, a claim petition which has not been dismissed u/r 206, cannot be dismissed in default u/o 9, rule 4 CPC. If the claimant does not appear on the date fixed, the Tribunal shall proceed to decide the claim. If the evidence has been led or partly led, it may examine the evidence and make an award, where evidence has not been led, the Tribunal may decide the matter for insufficiency or for want of evidence, but having proceeded with the matter beyond the stage of rule 206, it cannot dismiss it only on the ground that on the date fixed, the claimant or claimants have failed to appear. No court or Tribunal can be regarded as powerless to recall it's own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. Power for restoration of the petition or for the restoration of the restoration application can be found u/s. 151 CPC. See:

(i) United India Insurance Co. Ltd. vs. ADJ, M. Nagar, 2005 ACJ 470 (All)

(ii) UIIC Ltd. vs. Rajendra Singh, 2000 ACJ 1032 (SC)

20(b). No review of previous award: MV Act, 1988: Section 169(2) r/w Rule 221: Claim Tribunal: Power of Review: Neither in Sec. 169(2) nor u/r 221 there is power of review vested in Claims Tribunal. Thus, power of review is not available to Tribunal for recall of any judgment and award passed by it earlier. See:

(i) OIC Limited Vs. Dharmendra, AIR 2015 (NOC) 1246 (All)

(ii) Surendra Singh Vs. Smt. Ramadevi, 2010(5) ALJ (NOC) 593 (All). (2000(18) LCD 1119 relied on)

21. Disability: Medical Certificate: Doctor need not be examined: (A) Medical certificate showing 50% disability due to injuries in accident produced by injured claimant. Doctor not examined. Held by Division Bench, "Examination of Doctor to prove medical certificate not required. Medical practitioners should

ordinarily be not summoned and made to wait for long for depositions. Courts should respect medical practitioners. See: OIC vs. Surendra Umrao, 2007 (67) ALR 580 (All)(D.B.)

(B)Medical bill when not proved by witness: In Motor Accident Claims, the veracity of contents in documents like medical bill, disablement certificate and discharge certificate etc. cannot be taken into consideration unless the author deposes before court and offers himself for cross-examination. See:

(i) Rajesh Kumar Vs. Yudhvir Singh, 2008 ACJ 2131 (SC)

(ii) Sudhir Bhuiya Vs. N I C Ltd. 2005 (1) TAC 66 (Calcutta)

22. Goods vehicles: Travelling in Tractor: Insurer is not liable: (A) Under Section 147, Section 2(14) of MV Act, 1988, insurer is not liable to pay in case of injury or death of gratuitous passenger. See:

(i) New India Assurance Co. Ltd. vs. Vedwati, AIR 2007 SC 1334

(ii) NIC Ltd. vs. Asha Rani, AIR 2003 SC 607 (Three Judge- Bench)

(iii) 2007 (69) ALR (SC) Summary 38

(iv) Smt. Thokchom Ongoi Sangeeta vs. OIC Ltd., AIR 2008 SC 245

(v) OIC Ltd. vs. Devireddy Kondareddy, AIR 2003 SC 1009

(vi) NIC Ltd. vs. Ajit Kumar, AIR 2003 SC 3093

(vii) NIC vs. Prema Devi, 2008 (2) Supreme 205

(B) Passenger when traveling in truck with cattle, insurer liable: Where the passenger was traveling in goods vehicle (truck) along with his cows & buffaloes, it has been held that the insurance company will be liable to pay compensation. See: NIAC Ltd. vs. Budhiya Devi, 2010 ACJ 2045 (SC).

23. Tractor, trolley, trailer: definition vide 1994 Amendment:

(A) Tractor is not a good carriage u/s. 2(14)

(B) Trolley attached (fitted) to tractor—not insured. Death under trolley, company not liable.

(C) Deceased was traveling on trolley, company not liable. See: OIC vs. Brij Mohan, AIR 2007 SC 1971.

(D) **"Tractor" & "Dumper" is covered within the definition of "Motor Vehicle" u/s 2(28):** The Tractor is a machine run by diesel or petrol. It is a self-propelled vehicle for hauling other vehicles. It is used for different purposes. It is also used for agricultural purposes, along with other implements. It is a self-propelled vehicle capable of pulling alone as defined under the definition of motor vehicles. It does not fall within any of the exclusions as defined under the Act. Thus, it is a motor vehicles in terms of the definition under Section 2(28) of the Act. So, even without referring to the definition of the Tractor in S. 2(44), if the definition of the motor vehicle as given under the Act is strictly construed, even then the Tractor is a motor vehicle as defined under the Act. See: Smt. Santosh Chairman, Rajasthan State Road Transport Corporation & Ors. Vs & Others, AIR 2013 SC 2150 *(para 22)*

(E) **Jugaad is 'Motor Vehicle' u/s 2(28) of the MV Act**: 'Jugad' is covered in the definition of the motor vehicles under Section 2(28) of the Act. The statutory authorities cannot therefore escape from their duty to enforce the law and restrain the plying of 'Jugaad'. The statutory authorities must ensure that 'Jugaad' can be plied only after meeting the requirements of the Act. Jugaad his become a menace to public safety as they are causing a very large number of accidents. 'Jugaads' are not insured and the owners of the 'Jugaad' generally do not have the financial capacity to pay compensation to persons who suffer disablement and to dependents of those, who lose life. Thus, considering the gravity of the circumstances, the statutory authorities must give strict adherence to the circular issued by Ministry of Shipping, Road Transport and Highway. See: Chairman, Rajasthan State Road Transport Corporation & Ors. Vs. Smt. Santosh & Others, AIR 2013 SC 2150 *(Para 31)*

24-(A) **Laboures Traveling in Tractor-Trolley, insurer not liable:** Labourers traveling in a trolley attached to a tractor got injured when it met with accident. Insurer has no liability. See:

(i) UIIC Ltd. vs. Serje Rao, 2008 (70) ALR 146(SC)

(ii) OIC Vs. Brij Mohan, 2007(7) Scale 753(SC)

(iii) Smt. Yallwwa Vs. NIC, 2007(3)TAC 1(SC)

(B) Tractor- Trolley when not separately insured, insurer not liable: A tractor is not even a good carriage. The "goods carriage" has been defined in Sec. 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods whereas "tractor" has been defined in Sec. 2(44) to mean "a motor vehicle which is not itself constructed to carry any lead (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer'' has been defined in Sec. 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle." A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Sec.2(14) of the Motor Vehicle Act. The tractor was meant to be used for agricultural purpose. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes unless registered otherwise. See: NIC Vs. V.Chinnamma, 2004(3) TAC 577(SC)

(C) Tractor/Trolley when being used for non agricultural purposes, insurer not liable: Tractor/Trolley when being used for non agricultural purposes, insurer is not liable. See:

(i) NIC Vs. V.Chinnamma, 2004(3) TAC 577(SC)

(ii) NIC Vs. Asha Rani, (2003) 2 SCC 223 (SC)

25. Multiplier & Age: How to select to multiplier?:

(A) Death of driver aged 37 years, monthly salary Rs. 6040/-: Tribunal adopted multiplier of 16. In view of the age of the deceased driver appropriate multiplier of 12 applied, loss assessed at Rs. 5,76,000/- with other expenses total compensation awarded by Supreme Court Rs. 6,00,000/-, interest allowed 7.5%. See:

(i) Managing Director, TNSTC vs. Sri Priya, 2007 (67) ALR 813 (SC)

(ii) Bijoy Kumar Dugar vs. Bidyadhar Dutta, II (2006) ACC 36 (SC)

(B) Where at the time of death the deceased was 32 years of age, the correct multiplier would be 17. See: Baby Radhika Gupta vs. OIC Ltd., 2009 (7) Supreme 546

(C) Multiplier, age & determination of compensation when the case falls u/s. 166 & not u/s. 163-A: The multiplier to be used should be as which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years. See: Smt. Sarla Verma vs. Delhi Transport Corporation, AIR 2009 SC 3104

(25-A).Interest Rate--- How to ascertain?: **(A)** Tribunal awarded 10% interest from the date of filing the claim application till date of payment is discretionary relief granted by the tribunal and cannot be said to be inadequate and inappropriate. See:

(i) Managing Director, TNSTC vs. Sri Priya, 2007 (67) ALR 813 (SC)

(ii) Bijoy Kumar Dugar vs. Bidyadhar Dutta, II (2006) ACC 36 (SC)

(25-B): Fluctuation in rate of interest: Rate of interest will be sometimes higher & other times it may be lower. It depends upon the banking & market rate. See:

(i) UOI Vs. Smt. Chandrakali Chaturvedi, 2010 (4) ALJ 269(All)(LB)

(ii) OIC Ltd Vs. Swaminathan, 2006 (1) TAC 965 (SC)

(iii) Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar, (2015) 4 SCC 237

(25-C). Date of calculation of interest: Normal rule is that interest is to be calculated from the date of claim to date of award. Only in exceptional cases like inordinate delay in filing appeal by claimant or decision of a case delayed on account of negligence of claimant, interest may be awarded from a later date provided that the Tribunal or High Court gives reasons for that. See: Kajal Vs. Jagdish Chand, (2020) 4 SCC 413.

26. Compensation amount—Notional income: (A) Under Sections 173 & 163-A of the MV Act, quantum of compensation, no proof of the income of deceased—Rs. 15000/- assessed as notional income as per 2nd schedule and 1/3 deducted for personal expenses, Rs. 1,20,000/- assessed as per 2nd schedule, further a sum of Rs. 5,000/- added for pain and agony, medical expenses and funeral expenses. Appeal by UIICO Ltd. filed on the ground of award money as being highly excessive and no proof of income of the deceased, dismissed. See: UII Co. Ltd. vs. Smt. Rundhawati, 2006 AICC 171 (All)(DB)

(B) Notional income when sufficient for calculation of amount compensation?: Where it was proved by evidence that the injured claimant owned certain agricultural land but there was no convincing evidence to prove the income out of that, it has been held by the Supreme Court that it cannot be said that there is total loss of income due to the injury suffered by the claimant and the calculation of the amount of compensation on the basis of notional income is justified. See: Ponnumany Vs. V.A.Mohanan, 2008 ACJ 1338 (SC)

27(A). Composite negligence of joint tortfeasors and options of the claimant: There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident to the extent of his own negligence. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. However, in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. In such case, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. See : Khenyei Vs. New India Assurance Company Limited , (2015) 9 SCC 273 *(paras 15 & 22.1)*

27(B). When two or more vehicles are involved in the accident: Claimant's right: Under Section 168 of the MV Act, claimant or person wronged has got a choice of proceeding against all or any one or more than one of the wrong doers for the whole damage (compensation) if otherwise proved. It is the duty of the claim Tribunal to apportion and specify respective liability of owners or drivers or insurers of vehicles involved in the accident to the extent of damage contributed by them provided they are impleaded and heard by Tribunal. Liability of joint tort-feasors is joint and several. See: UPSRTC vs. Smt. Rajani Garg, 2007 (3) ALJ 650 (All)(DB)

28(A) Difference between contributory & composite negligence: There is a difference between contributory and composite negligence. In the case of contributory

negligence, a person who has himself contributed to the accident to the extent of his own negligence. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. However, in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. In such case, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several. See: Khenyei Vs. New India Assurance Company Limited , (2015) 9 SCC 273 *(paras 15 & 22.1)*

28(B). When head of two vehicles on collision: Contributory negligence—vehicles had head-on-collision, drivers of both vehicles should be held responsible to have contributed equally to accident, such finding of Tribunal to gather with awarding 10% interest upheld by Supreme Court. See: Bijoy Kumar Dugar vs. Bidyadhar Dutta, II (2006) ACC 36 (SC)

28-A. Claim petition u/s. 163-A when not maintainable?: Where claim petition u/s. 163-A of the Motor Vehicles Act, 1988 was filed in the MACP on the ground that the claimant had suffered fracture of Tibia and fore arm and lacerated injuries but he had failed to produce any evidence to prove his permanent disablement and the tribunal had assessed his permanent disability at 16% without disclosing the basis therefor and allowed compensation, it has been held that the claim petition u/s. 163-A was not maintainable without any evidence of permanent disablement. See: NIA Co. Ltd. vs. Ushakumari, 2006 ACJ 2017 (Kerala)

29. Section 163-A & 166 & difference in between them: (A) Under Sections166 & 163-A, difference, nature of relief under powers of claimants to opt between the two, Sec. 166 provides for fault based liability and negligence of the driver or the owner has to be proved before the owner of the vehicle or insurance company can be held liable for payment of compensation in a motor accident claim case. Sec. 163-A on the other hand provides for strict liability in which case negligence or default on part of owner of

vehicle or the driver does not have to be proved and compensation is payable strictly as per the second schedule to 1988 Act. U/s. 163-A MV Act, 1988, schedule u/s. 163-A will not be used as ready reckoner but as a guide. See:

(i) OIC Ltd. vs. Meena Variyual, (2007) 5 SCC 428

(ii) Mahendra Pal Singh vs. Mukundilal, Prabandhak, 1996 (27) ALR 649 (SC) (Three-Judge Bench)

(B) Petition u/s 166 can be converted into one u/s 163-A & vice versa: A claim petition filed u/s 166 of the MV Act can be converted into a petition u/s 163-A of the Act & vice versa. See: UOI Vs. Ashok Kumar, 2010(3) ALJ 390.

30. Third party: who is?: Under Section 147(1) of the MV Act, 1988, "Any person", insurance policy in terms of Sec. 147 is not intended to cover person other than third parties. Employees of the insured are not normally covered under the statutory insurance except in cases of a liability arising under the Workmen's Compensation Act, 1923. See:

(i) OIC Ltd. vs. Meena Variyual, (2007) 5 SCC 428

(ii) OIC Ltd. vs. Rajni Devi, (2008) 5 SCC 736

(iii)NIAC Ltd. vs. Sadanand Mukhi, (2009) 2 SCC 417

31(A). Registration of vehicle not conclusive proof of ownership of legal title to vehicle: Registration of vehicle is not conclusive proof of ownership of legal title to vehicle. Section 2(30) of the MV Act, 1988 creates legal fiction of ownership in favour of lessee only for purposes of the MV Act, 1988 but not for purpose of law in general. See : **Industrial credit and development syndicate Limited Vs. Commissioner of Income Tax, Mysore, (2013) 3 SCC 541.**

31(B). When third person other than registered owner driving vehicle—liability of insurer: U/s. 110-D of MV Act, 1988, use of vehicle by a third person other than the registered owner with the permission of the registered owner. Insurer is still liable to pay compensation, insurance is of the vehicle and not of the owner. See:

1. **Oriental Fire And General Insurance Co. Moradabad vs. Smt. Devi, 2007 (69) ALR 706 (All)**
2. **Rikhi Ram vs. Sukhiram (Smt.), (2003) 3 SCC 97**
3. **OIC Ltd. vs. Tilak Singh, (2006) 4 SCC 404**

31(C). **Person in possession of the vehicle under hypothecation to be treated as owner of the vehicle:** There is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasize, if the vehicle is insured, the insurer is bound to indemnify unless thee is violation of the terms of the policy under which the insurer can seek exoneration. See :

(i) **HDFC Bank Limited Vs. Reshma & Others, (2015) 3 SCC 679 (Three-Judge Bench)***(para 23)***.**

(ii) Managing Director, Karnataka State Road Transport Corporation Vs. New India Assurance Co. Ltd., (2016) 2 SCC 382.

32. **Notional income:** Sectios 168, 173 of MV Act, 1988, notional income, quantum of compensation, deceased aged 35 years, claimants widow and four minor daughters, earning of deceased claimed to be Rs. 140/- per day or Rs. 4200/0 P.M.. Supreme Court held "even a labourer earns 100/- per day or Rs. 3000/- P.M., so notional income held Rs, 36000/- P.A. See: **Laxmi Debi vs. Mohammad Tabbar, 2008 (2) TAC 394 (SC)**

33 A. **Transfer (sale) of vehicle--effect : Controversy as to date of transfer :** U/s. 157 of MV Act, transfer of vehicle, took place after the date of accident, transfer not notified to the insurer/company, not to make any difference, such controversy is only academic in nature. Insurance company has every right to recover the amount of compensation from the owner if it wrongly held responsible (as in this case). See:

1. In this case, there was controversy as to the date of transfer of the vehicle— Held that even if the vehicle was transferred to the purchaser before the date of accident, it will not change the position at all. It is not the transfer of the

vehicle but the accident which furnishes the course of action for the claimant before the Tribunal.

(1). OIC Ltd. V. Jhansi vs. Smt. Anju Khare, 2007 (68) ALR 300 (All)DB):

(2). UIIC Ltd. Shimla vs. Tilak Singh, (2006) 4 SCC 404

(B) Transferor is not absolved of his liability so long as his name continues in the R.T.O. records: As per Sections 2(30) and 50 of the M.V. Act, 1988, a vehicle on transfer ought to be registered within 30 days of sale in terms of Section 50 of the Act. The timelines and obligations provided by Section 50 of the Act are only to facilitate reporting of the transfer of the vehicle to the relevant transport authorities. Transferor is not absolved of his liability so long as his name continues in the R.T.O. records. **See:**

(i) Prakash Chand Daga Vs. Saveta Sharma & Others, AIR 2019 SC 66.

(ii) Naveen Kumar Vs. Vijay Kumar, (2018) 3 SCC 1.

(C) Person registered in registration certificate as owner to be treated as owner of vehicle even if he had sold/transferred the vehicle to other person : Registered owner had transferred the vehicle to other person but continued to be reflected as owner in the records of the registering authority i.e. in the registration certificate. Liability of the person whose name is registered as owner in the registration certificate would not be absolved. Owner of a vehicle is that person in whose name the motor vehicle stands registered. In case of minor, guardian of the minor would be treated as owner. See **: Naveen Kumar Vs. Vijay Kumar & Others, AIR 2018 SC 983 (Three-Judge Bench)**

(D) Transfer of vehicle prior to accident but name of transferor continuing in R.C? : Where ownership of vehicle was transferred prior to accident but neither transferor nor transferee took any step for change of name of owner in certificate of registration, it has been held by the Supreme Court that as per Sec 50 & 2(30) of the MV Act 1988 in view of the said omission, the transferor must be deemed to continue as owner of vehicle for purposes of the MV Act, even though in civil law he would cease to be owner after sale of the vehicle and the transferor would be liable to pay compensation. See:

1) Pushpa v. Shakuntala, AIR 2011 SC 682

2) T.V Jose v. Chacko P.M., 2001 (8) SCC 748.

3) P.P Mohammed v. K. Rajappan, (2008) 17 SCC 624

34. Transfer— after death of owner: Under Section 50 of the MV Act, 1988, Mode of transfer on death of owner specifically provided u/s. 50(2), case of death has to be read as having been excluded from purview of Sec. 50(1), when owner was dead, report had to be made in Form 31 as per Sec. 50(2) r/w. Rule 56. Information to RTO submitted by the petitioner in Form No. 29 and 30, owner was admittedly dead on date when report was submitted for transfer of vehicle. Petitioner thereby got Registration transferred in his favour by playing fraud on registering authority, cancellation of registration valid. See: **Narain Gupta vs. Deputy Transport Commissioner, Kanpur, 2007 (3) ALJ 579 (All)**

35. Permanent Disability or Disability Simplicitor: Under Sections 163-A & 168 of MV Act, 1988, if the case is not of permanent disablement but of disablement simplicitor, then only Sec. 168 is attracted and not Sec. 163-A. In this case diablility of the right leg of the injured was 70% as per medical report, Rs. Three lacs as compensation found just and proper. See:

1. **NIC Ltd. Allahabad vs. Rai Amitendra Jain, 2007 (68) ALR 271 (All)(D.B.)**
2. **Nagesha vs. M.S. Krishna, 1997(8) SCC 349**
3. **Deepak Agnihotri vs. Jai Bhan, 1999 (3) TAC 647**
4. **Mahendra Pal Singh vs. Mukundilal Prabandhak, 1996 (26) ALR 649 (SC)**

36. Section 170 of MV Act, 1988: (A) Application rejected, appeal filed. No appeal lies on the part of the Insurance Company. See:

1. **New IIC Ltd. Agra Road Hathras vs. Siya Ram, 2007 (68) ALR 303 (All—D.B.)**
2. **OIC Ltd. vs. Smt. Manju, 2007 (4) ADJ 101 (All—D.B.)**
3. **H.S. Chetan vs. Chandra Mouli, AIR 2007 (NOC) 1642 Karnataka (D.B.)**
4. **Rekha Jain Vs. NIC Limited, (2013) 8 SCC 389.**

(B) Reasons must while disposing of application u/s 170 of the MV Act, 1988: There is a mandate in Sec. 170 to give minimum possible reason/s to accept or reject such application. See...

1. UIIC Ltd. vs. Jyotsnaben Sudhirbhai Patel, 2003(7) SCC 212

2. OIC Ltd. vs. Kanchan Pandey 2010 ACJ 2027 (All--DB)

(C) Appeal by insurer not to lie unless permission u/s 170 has been obtained ..... Appeal by insurer against award of compensation would not be maintainable if permission has not been obtained by the insurance company u/s 170 of the MV Act,1988.See.... **UIIC Ltd Vs. Anne Swaroop, 2010(3) ALJ 532(All..LB)**

37. Non-disclosure of material facts & its effect--- In case of non-disclosure of material facts, Insurance Company would be justified in repudiating the claim. See--- **Satwant Kaur Sandhu vs. N.I.A. Company Ltd., 2009(5) Supreme 523**

38(A). Accident & standard of its proof : Strict proof of accident is not possible to be given by claimants. The claimants have to establish their case merely on touchstone of preponderance of probability. Standard of proof beyond reasonable doubt cannot be applied. See : **Bimla Devi vs. Himachal Road Transport Corporation, AIR 2009 SC 2819.**

38(B).Independent witness to accident when not examined? : Where the independent witness to Motor Accident named in the FIR was not examined as witness and only his FIR statement was relied upon, it has been held by the Supreme Court that the finding based on only FIR statement of the independent witness was not sufficient. See : **State of Punjab Vs. Surinder Kaur, 2002(1) TAC 837 (SC).**

39. Borrowed Motor Vehicle from real owner & compensation--- Where the deceased was not the owner of the motor vehicle in question (motor bike) but he had borrowed the same from its real owner, it has been held that the deceased cannot be held to be employee of the owner of the motorbike

although he was authorized to drive the vehicle by its owner and therefore he would step into the shoes of the owner of the motorbike. Accordingly the L.Rs. of the deceased who have stepped into the shoes of the owner of the motor vehicle cannot claim compensation u/s. 163-A of the M.V. Act, 1988. See--- **Ningamma vs. UIIC Ltd., AIR 2009 SC 305.**

40. **Death of house wife/mother and determination of compensation u/s 166 MV Act** : Value of services rendered by wife/mother of family is available 24 hours and her duties are never fixed. Court have recognized contribution made by wife to house work as invaluable and that cannot be computed in terms of money and such services rendered by home maker have to be necessarily kept in view while calculating loss of dependency. It is reasonable to fix her income at Rs. 3000/- per month. See :

(ia). Kirti Vs Oriental Insurance Company, (2021) 2SCC 166 (Three-Judge Bench)(Para 9)

(i) Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar, (2015) 4 SCC 237

(ii) Jiju Kuruvila Vs. Kunjujamma Mohan, (2013) 9 SCC 166.

(iii) Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54

(iv) Arun Kumar Agarwal Vs. NIC Ltd, (2010) 9 SCC 218.

41. Scope of Sec 140 MV Act, 1988 .... **(A)** Sec 140 is indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim u/s 140 is made at the threshold of the proceeding & the payment of compensation u/s 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim u/s 140 is not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation u/s 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy. **See**.... **Eshwarappa alias Maheshwarappa vs. C.S. Gurushanthappa, AIR 2010 SC 2907**.

(B)- No Fault liability & Compensation u/s 140... Rs. 50,000/- awarded by tribunal u/s 140 of the M.V. Act for no fault liability can not be ordered to be refunded on final findings of negligence of the deceased. See...

1. Indra Devi vs. Bagada Ram, 2010 ACJ 2451 (SC).

2. Eshwarappa vs. C.S. Gurushanthappa, 2010 ACJ 2444 (SC)

42. Summary procedure & limited application of CPC to claim petitions ... **(A)** As per Sec 169 of the MV Act, tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. CPC is not applicable to the proceedings before the Claims Tribunal except to the extent provided in Sec 169(2) & the rules. See.... **Bimlesha vs. NIAC Ltd, AIR 2010 SC 2591.**

(B) Order 12, rule 2 CPC not to apply for admission or denial of documents... According to rule 221 of the U.P. Motor VEHICLES Rules, 1998 & Sec. 149 (2) (a) (ii) of the MV Act 1988, order 12, rule 2 CPC is not applicable to MAC cases, hence party can not be directed to either admit or deny the document (Letter of RTO stating that the DL was not issued in the name of offending truck) See... **O.I.C. Ltd. vs. Poonam Kesarwani, 2010 ACJ 1992 (All...DB).**

44. Bus driver killed in robbery entitled to compensation .... Where the deceased driver of vehicle had died preventing robbery in bus & the intention of robbers was to rob passengers of bus, the dependants of the deceased driver would be entitled to compensation u/s 163-A of the MV Act. See... **UPSRTC Vs. Vidya Devi, 2010(4) ALJ 1 (All..LB)**

45. Cover note of Policy and its validity period?--- (A) According to rule 142 (2) of the Central Motor Vehicle Rules, 1989, a cover note referred to in sub-rule (1) shall be valid for a period of sixty days from the date of its issue and the insurer shall issue a policy of insurance before the date of expiry of the cover note.

(B) Insurance cover not to bind insurer unless premium paid--- According to Sec. 64 VB of the Insurance Act, 1938, Insurer cannot assume

risk unless and until premium is paid. Claimant wanted insurance coverage from 12.3.1988 to 12.9.1989 but premium amount of one year was received by insurer only on 26.8.1988 and therefore in view of bar in Sec. 64 VB, insurer could not grant insurance cover with retrospective effect from 12.3.1988. There was nothing illegal or arbitrary about issuance of insurance cover for one year effective from date of receipt of premium. See---**Deokar Exports Pvt. Ltd. Vs. NIAC Ltd. 2009 (1)SSCD 55 (SC)**

(C) Rights and liabilities under policy of insurance how to govern?: Rights and liabilities of parties are strictly governed by the policy of insurance. No exception or relaxation can be made on ground of equity. See---**Deokar Exports Pvt. Ltd. Vs. NIAC Ltd. 2009 (1) SSCD 55 (SC)**

(D). Release of amount of Compensation: Where goods vehicle carrying passengers met with accident and the vehicle was not insured for carrying any passengers, it has been held that Sec.147 of the MV Act, 1988 as amended in 1994 casts liability upon insurer to pay compensation to the claimants. The words "any person" occurring in Sec. 147 covers only driver, conductor and certain number of labourers. Before release of amount to claimants, owner of the vehicle shall furnish security for entire amount which is payable by insurer to the claimants. Offending vehicle shall be attached as a part of security. In case of default in payment, executing court can direct realization by disposal of securities to be furnished or any other property of the owner. See: **Pramod Kumar Agarawal Vs. Mushtari Begum, 2004(3) TAC 289 (SC)**.

44(A). Long term fixed deposit of the amount of compensation and its pre-mature withdrawl : Tribunals very often dispose of the claimant's application for withdrawl of amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to claimants. The tribunals appear to think that in view of the guidelines issued by the Supreme Court in the case of Kerala

SRTC Vs. Susamma Thomas, (1994) 2 SCC 176, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the tribunals is necessary in the interest of justice. The contrary approach of the tribunals has been deprecated by the Supreme Court. See: **A.V. Padma & Others Vs. R. Venugopal & Others, (2012) 3 SCC 378.**

44(B). Pre-mature release of amount of compensation for genuine needs : Tribunals very often dispose of the claimant's application for withdrawal of amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The tribunals appear to think that in view of the guidelines issued by the Supreme Court in the case of Kerala SRTC Vs. Susamma Thomas, (1994) 2 SCC 176, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the tribunals is necessary in the interest of justice. The contrary approach of the tribunals has been deprecated by the Supreme Court. See: **A.V. Padma & Others Vs. R. Venugopal & Others, (2012) 3 SCC 378.**

44(D). Guidelines of the Supreme Court for release of amount of compensation : Kindly see the following cases :

(i) National Insurance Co. Ltd. Vs. Smt. Urmila Singh, 2014 (102) ALR 435 (All)(DB)

(ii) General Manager, State Road Transport Corporation, Trivendrum Vs. Susamma Thomas (Mrs.), (1994) 2 SCC 176.

(iii). General Insurance Council Vs. State of AP (2007) 12 SCC 354

45. Notification dated 12.05.2015 issued by the Ministry of Road Transport & Highways, Govt. of India, for protection of good Samaritans (passers by & by standers) and witnesses to the accident:

(i) Notification dated 12.05.2015 given in para 67 of **Save Life Foundation Vs. Union of India, (2016) 7 SCC 194.**

Note : Total 15 guidelines for protection of witnesses, passers by, stand by and saving life of the victim of the accident have been given under the said notification in compliance with the above judgment of the Hon'ble Supreme Court in Save Life Foundation Case.

(iii) Parmanand Katara Vs. Union of India, (1989) 4 SCC 286

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