

Court No. - 26

Case :- FIRST APPEAL FROM ORDER No. - 1343 of 2002

Appellant :- The New India Assurance Co. Ltd.

Respondent :- Smt. Suman Mishra And Others

Counsel for Appellant :- Rakesh Bahadur

Counsel for Respondent :- Aklank Jain, B.R. Singh, Braj Raj

Singh, Krishna Mohan Rai, Mahendra Nath Pandey

Hon'ble Dr. Kaushal Jayendra Thaker, J.

1. Heard Sri Rakesh Bahadur, learned counsel for the appellant and Sri Krishna Mohan Rai, learned counsel for the respondent-claimant (s). Though there are other four advocates, none appeared when the matter was argued.

2. This First Appeal From Order has been filed under section 173 of Motor Vehicle Act, 1988 (hereinafter referred to 'Act, 1988') by Insurance Company, being aggrieved by order dated 7.5.2002 passed by Motor Accident Claims Tribunal / District Judge, Mainpuri in MACP No. 65 of 2000 (Smt. Suman Mishra Versus Prakash Chandra Katiyar and others) awarding a sum of Rs.2,87,500/- with 9% rate of interest for the injuries sustained by the claimant-opponent no.1.

3. The parties are referred to as appellant and (claimant) opponent No.1, owners as opponent no. 2 and 3.

4. Before I advert to the factual scenario the issues which are not in dispute are (a) accident is not in dispute, (b) involvement of the vehicle insured by the appellant is not in dispute, (c) finding of negligence is not challenged either in oral submission or in written submission, (d) it is not in dispute that the claimant-injured is a non tortfeasor, (e) It is not in dispute that there is permanent partial disablement as there is amputation of lower limb, (left) below the

knee of a lady aged 35 years at the time of accident and (f) the date of accident is also not in dispute.

5. In light of the undisputed aforesaid facts the skeletal facts are narrated.

6. The claimant filed MAC No. 65 of 2000 against the driver, owner and the appellant insurance company before the Motor Accident Claims Tribunal/District Judge Mainpuri claiming a compensation of Rs.11,00,000/- along with 24% interest in respect of the injuries suffered by her in the motor accident alleged to have occurred on 6.5.1998 around 8.45 p.m.

7. The claim petition was filed inter alia on the grounds that the claimant was going on a motorcycle No. UP-78/1008 along with her husband from their village Nagla Bhawani to Kanpur when the driver of the truck No. UMD 8059 while driving the truck rashly and negligently hit the said motorcycle from behind, causing serious injuries to the claimant-respondent no.1 as well as her husband -Sunil Kumar Mishra; that the claimant-respondent no.1 was treated for injuries first at District Hospital Kanpur and subsequently at Lilamani Nursing Home; that during the treatment the claimant – opponent no.1, her left foot was amputated below the left knee causing permanent physical disability to her ; that the FIR of the accident was lodged at S.O. Bellapur District Kanpur on the date of the accident ; that at the time of the accident she was 35 years of age and used to earn Rs.3,000/- per month by sewing clothes and that she also looked after the house and the children ; that in this manner Rs.11,00,000/- was claimed under different heads along with 24% interest.

8. The opposite party no. 3-Mahesh Chandra Katihar, the owner of the truck UMD-8059 filed his written statement and denied all the

allegations made by the claimant opposite party no.1, including the fact of the accident ever having taken place with truck No. UMD-8059. The appellant (company) was also impleaded as defendant no. 3 before the Tribunal and it also filed its separate written statement and contested the claim of the opposite party no. 1 on various grounds. All the allegations made in the claim petition were denied.

9. The grounds of appeal raised in the memo of appeal read as under :

“1. Because the judgment and order dated 7.5.2002 is wholly arbitrary and illegal and in the teeth of the evidence on record and is liable to be set aside.

2. Because on the one hand the Tribunal has awarded compensation to the claimant – opposite party on the basis that he had suffered 65% permanent disability and calculated her income on notional basis as if she had no income and after having done that the Tribunal has illegally proceeded to grant further compensation on various heads which is wholly arbitrary and illegal.

3. Because although the claimant opposite party had submitted photostat copies of the medical bill vouchers for a sum of Rs.70,000/- only yet the Tribunal has awarded arbitrary a sum of Rs.1,00,000/- without any basis.

4. Because the claimant – opposite party no. 1 had submitted only photostat copies of the bills of medical prescription and on gross examination did not have the course of say that the original bills have not been

deposited elsewhere and reimbursement have not been obtained.

5. *Because the photostat copies of the medical bills not having been proved in accordance with law, they were wholly inadmissible in evidence and no compensation could have been awarded on the basis of the said photostat inducements.”*

6. *Because even the original medical prescription were not filed and as such the photostat copies of the medical prescription were wholly inadmissible in evidence and no compensation could have been awarded on the basis of the said documents.*

7. *Because the investigation report of Shri Ram Sharan Singh Chauhan, official investigator of the appellant company dated 6.7.2002 clearly shows that the husband of the claimant opposite party no. 1 has already received medical reimbursement of Rs.1,27,695/- from his department in respect of injuries caused to himself as well as his wife and this fact not having been disclosed before the Tribunal, the claimant opposite party no. 1 was also not entitled to any compensation from the appellant company.*

8. *Because in view of the fact that the claimant opposite party no. 1 had deliberately concealed material facts from the Tribunal, the award of the Tribunal dated 7.5.2002 is vitiated and liable to be set aside.*

9. *Because in any view of the matter the amount*

awarded against the appellant company is excessive and not based on any principles of law and even as such the impugned judgment and award dated 7.5.2002 is liable to be set aside.”

10. Sri Rakesh Bahadur, learned counsel for appellant has relied on decisions of this High Court rendered in First Appeal From Order No.3930 of 2018 (The New India Assurance Company Limited Versus Smt. Pushpa Devi and three others) decided on 29.10.2018 and First Appeal From Order No. 2190 of 2010 (ICICI Lombard General Insurance Company Limited Versus Smt. Reena Tyagi and others) and one another connected matter decided on 27.3.2017 by Division Bench of this Court and has contended that in view of the decision of New India Assurance Company Limited Versus Smt.Pushpa Devi and three others (supra) this Court should overturn the judgment of the Tribunal as the **driver who was initially joined** but was later deleted from the array of parties and hence in view of the provisions of Rule 204 of the Rules framed under Act, 1988 (hereinafter referred to as 'said Rules') particularly Uttar Pradesh Motor Vehicle Rules, 1998 and has submitted that the driver of the vehicle having been deleted the matter will have to be remanded to the Tribunal for fresh decision. The said decision was based on the decision of ICICI Lombard (supra) it is further submitted that in view of the decision of ICICI Lombard (supra) if this Court does not deem it fit to remand the matter in view of Rule 220A, the compensation should be recalculated as per the said Rules and the amount has to be confined to the same.

11. Learned counsel has further submitted that there is an application filed by Insurance Company bringing on record that the claimant being a wife of a Government servant had already received the amount of medical reimbursement and, therefore, also she was not

entitle to any amount under the head of medical expenses and this was not disclosed to the Tribunal and therefore also the claim petition requires to be dismissed.

12. Sri Krishna Mohan Rai, learned counsel for the respondent-claimant has submitted that the driver was joined and was deleted from the array of parties and has further submitted that even if the driver was not joined, it would not vitiate the proceedings and has relied on the decision of Supreme Court in *Josphine James Versus United India Insurance Company Limited and another*, (2013) 16 SCC 711. Learned counsel has further submitted that there is amputation of lower limb of a lady who was in her prime age with two minor children. The fact that no reply is filed to the application filed under Order 41 Rule 27 of C.P. Code will not preclude him from submitting that the documents which are produced go to show that the amount was paid to Sri S.K.Mishra (husband) for his own injuries as he had also sustained injuries and she has not claimed twice from the Insurance Company and, therefore, there is no question of deducting the said amount. As far as the Rules are concerned, it is submitted that they had to be read for the benefit of a claimant rather than defeating the claim of the claimant.

13. Tribunal examined witness on the side of the claimant herself. The claimant examined herself as PW-1. She was an injured eye witness. The claimant examined PW-2 Krishna Murari. The claimant produced 62 documents to substantiate her case which were exhibited as 41G. The appellants nor the owners examined anybody however the owner produced the documents of cover note, policy, permit by way of documents at Exhibit 30G. Tribunal in its judgment has considered all these documents and thereafter has started discussing,

the evidence threadbare and has come to the conclusion and decided in favour of the claimant and against the insurance company .

14. This judgment is challenged by the Insurance Company and insurance company has raised several questions and argued which were never argued or substantiated by the Insurance Company before the Motor Accidents Claims Tribunal nor are they raised in the grounds of appeal though the appeal was preferred in the year 2002 when the old Rules were in vogue . It would be relevant for this Court to have a glance at the written statement filed by the Insurance Company discussed (supra) and in their reply, reply of denial is filed and have replied that they are not liable to pay any amount and that the age and income of injured is not accepted and be proved. The Insurance Company did not object before the Tribunal when the driver was deleted from the array of parties is an admitted position of fact.

15. In light of this, the controversy raised before this Court, all these aspects raised and submitted in aforesaid grounds and oral submissions of the counsels for the parties are decided together as they are interwoven and depend on the quantum itself awarded by the Tribunal and that the award requires to be quashed as the driver is deleted as a party and his presence was a must for which reliance is placed on the decision of this Court in First Appeal From Order No.3930 of 2018 (The New India Assurance Company Limited Versus Smt. Pushpa Devi and three others) decided on 29.10.2018 by learned counsel for appellant Sri Rakesh Bahadur.

16. In view of this, it would now be necessary to refer to the interpretation of the statute. More particularly whether the words 'shall' and 'may' and 'how' they should be construed and whether the

said Rules have a mandatory binding effect so as to annul the judgment of the Tribunal.

17. Reliance can be placed on a reported judgment of this Court in First Appeal From Order No.1302 of 2006 (The new India Assurance Company Limited Versus Hoti Lal and another) decided on 31.1.2018 which has considered the interpretation of the terms 'shall' and 'may' when it relates to beneficial piece of legislation, the finding in the said judgment reads as follows :

*“21. We will have to go to the term as is explained in the statute and to see whether the terms 'shall' was intended to be a mandatory provisions or a directory provisions. This Court is required to consider nature and design of the statute and also the consequence which would fall from statute one way or other. The impact of other provisions whereby the necessity of complying of the provisions in question is avoid. The object of the enactment if not visited with any penalty or the other consequence the term has to be treated as imperative term holding the term mandatory shall in consequence will have created to the claimant without very much furthering object of the enactment it has to construed as directory and, therefore, the word 'shall' in the backdrop of the object of the statute will permit this Court to hold that the word 'shall' has to be construed as directory. I am fortified in my view by the observations made in **Liverpool Borough Bank Vs. Turner, (1986) 30 LJ Ch 379 page 318** which decision has been approved by the Apex Court in **Chandrika Prasad Yadav Vs. State of Bihar, AIR 2004 SC 2036 page 2042** and reference is made in Principles of Statutory Interpretation and also the Privi Council’s decision in **Montreal Street Railway Vs. Normandin, AIR 1917 PC 142**, in this case the aforesaid view*

is taken as the requirements for judgment complied with as the judgment has discussed all objection raised by the Insurance Company and the denial thereof. This takes this Court to the order under 41 Rule 12 of Code of Civil Procedure and the scope of the Rule read with the facts of this case. parties were fully aware of their respective case and that has been thread bare discussed.

26. *Recently in First Appeal From Order No. 4022 of 2017 (Om Pal Singh Vs. National Insurance Company Ltd. & 2 others), decided on 19.12.2017, this Court has held “that Commissioner and Motor Accident Tribunal are not civil Court and trappings of civil procedure should not be made fully applicable for the proceedings in the Tribunal. I am supported in my view, on the decision of Apex Court in United India Insurance Company Ltd. Vs. Anwari and another 2000(38) Alld page 761, thus the question that the deceased died out of employment injuries is proved by the written statement filed by the owner just because at the time when the accident took place, he was said to be sitting besides the driver will not permit this Court to reject his claim once it is proved that he was in the truck because of his employment with the respondent truck owner. The Insurance Company has though heavily relied on the FIR and has relied on the decision of Apex Court in **National Insurance Company Ltd. Vs. Mt.Param Pal Singh, 2008(3) T.A.C. 378 (Del.)** and on the decision of Orrisa High Court in **Smt. K. Mallika Vs. Executive Engineer, Potteru Irrigation Division, Balimela, 2000(1) T.A.C. 549 (Ori)** cannot be invoked as there is no perversity in finding of the Authority below that the deceased died out of accidental injuries. The word arising out of employment has been*

explained by the Apex Court in **Daya Kishan Joshi & another Vs. Dynemesh Systems Pvt. Ltd., 2017 0 Supreme(SC) 1031** and therefore this being a question of fact which has been proved to the hilt by the claimants, will not permit me to take a different view in light of the decision of the apex Court in **Golla Rajanna Etc. Etc. Vs. Divisional Manager and Another, 2017 (1) TAC 259 (SC)** therefore, this question which is pure question of fact cannot be agitated without it being proved before the Trial Court. I am fortified in my view by the decision of Apex Court in **Syeda Rahimunnisa Vs. Malan Bi (Dead) By Legal Representatives and another (supra)** will not permit me to alter the finding on facts. Hence, the submission that the deceased died out of employment injuries is answered against the Insurance Company.”

“27. In appeal, though I have liberally permitted Sri Rakesh Bahadur-Advocate to argue on all the questions which according to him were important. However while going through the record, it is crystal clear that many of the grounds taken herein, namely framing of issues was never raised before the Commissioner. The parties went into the litigation fully knowing on what they were to lead the evidence. The question now cannot be agitated as it was never raised, during the trial as that was much prior to the judgment being delivered by the Authority. Insurance Company sat quite over this aspect and hence now it is not open for them to contend that the proceedings which are for the benefit of the claimant be defeated. They can not gain out of their mistake and even otherwise it does not go to the root of the matter. ”

18. The submission of learned Advocate for appellant that the

matter will have to be remanded as the driver has been deleted from array of party will have to be looked from the perspective of tortious liability and reference can be made to reported judgment of this High Court wherein the applicability of the Rules have been interpreted by this Court in FIRST APPEAL FROM ORDER No. - 199 of 2017 (National Insurance Company Limited, Lucknow Versus Lavkush and another) decided on 21.3.2017 and the said judgment has been ordered to be circulated. The reference to certain observations of the said Division Bench judgment more particularly paragraph no. 8 onward will be necessary wherein the High Court has considered the applicability of Rules while deciding claim petitions. The said paragraphs are reproduced as under :

“8. Documentary evidence included insurance, registration, driving licence of vehicle in question, and cash memos to show amount spent on medical treatment. A disability certificate was also filed. Oral evidence comprised of statement of Luvkush, as PW-1, and Chandra Shekhar as PW-2. Owner and Insurer did not produce any witness at all.

9. Tribunal answered Issue 1 in favour of Claimant, holding that accident was caused due to rash and negligent driving by Driver of Tempo and there was no fault on the part of Claimant or driver of Auto Rickshaw in which Claimant was traveling. With regard to Issues 2, 3 and 4, it held that all documents relating to tortfeasor vehicle, namely, registration certificate, insurance policy, permit, fitness certificate etc. were valid and driver also had a valid and effective driving licence.

10. Question of compensation was considered by deciding Issue 5. Tribunal held that though amputation of right leg, technically, is said to be a 50% disability which has also been so verified by competent authority, but considering the fact that Claimant is an unskilled labour and after amputation of his right leg, has become totally incapable of earning his livelihood by working as unskilled labour, hence in his case, it is 100% disability and compensation deserves to be computed accordingly.

Taking notional income as Rs. 3000/- per month, Tribunal has applied multiplier of 18. Besides, it has allowed Rs. 32,319/- towards medical expenses and another Rs. 30,000/- under different heads, as we have already noticed above.

11. Learned counsel for appellant contended that there was only 50% disability, duly verified through disability certificate produced by Claimant, hence Tribunal has erred in law in awarding compensation treating it a case of 100% disability. He further argued that in State of U.P., rules have been framed, i.e., U.P. Motor Vehicles Rules, 1998 (hereinafter referred to as the U.P. Rules, 1998"), in exercise of powers under Sections 28, 38, 65, 95, 96, 107, 111, 138, 176 and 230 of Act, 1988 read with Section 21 of General Clauses Act, 1897. Chapter IX thereof deals with Claims Tribunal. By amendment notification dated 26.09.2011, published in U.P. Gazette Extraordinary dated 26.09.2011, Rule 220A has been inserted therein, providing fixed amount of compensation payable to Claimant under different heads. It has fixed limit of compensation, under different heads like personal and living expenses of deceased, future prospects and other non pecuniary damages. Sri Agarwal contended that no amount, under different heads, over and above what is contemplated and provided under Rule 220A of U.P. Rules, 1998, can be awarded. He also urged that under Rule 220A(6), rate of interest is 7%. He argued that while computing compensation, Tribunal has no authority to determine any amount on its own, particularly in the light of the fact that delegated legislature has already intervened by fixing amount under different heads and provisions of U.P. Rules, 1998 shall prevail. Amount of compensation determined by Tribunal, not consistent with Rule 220A is without jurisdiction, illegal and hence cannot be sustained.

12. Appeal has been contested by Claimant-Respondent 1 through his counsel Sri Anoop Kumar Srivastava. So far as Respondent-owner is concerned, he has not challenged award and qua him award has attained finality.

13. Learned counsel appearing for Claimant-Respondent 1 contended that duty and responsibility of Tribunal is to award compensation which appears to it, "just". What amount of compensation will be "just", has

to be determined by Tribunal in view of Section 168 of Act, 1988. This obligation of Tribunal can neither be checked nor arrested nor controlled by subordinate legislature in any manner. Rules, therefore, have to be read as a mere guideline. Ultimate statutory obligation is upon Tribunal to determine "just" amount of compensation and this statutory authority of Tribunal cannot be restricted by even subordinate legislation. He further argued that looking to entire facts and circumstances, Tribunal has rightly found that here is a case of 100% functional disability and loss to Claimant. Amount of compensation has been computed accordingly by applying relevant multiplier, hence no interference is required and appeal should be dismissed.

14. We have heard learned counsel for parties at length and perused relevant statutory provisions as also various authorities cited at Bar as also the record.

15. Claimant is a young budding person having attained majority very recently when met accident. On the fateful day of 03.05.2015, he was just 20 years of age. He was working as unskilled labour when met accident and sustained serious injuries as a result whereof his femur was broken and entire right leg below knee got crushed badly. Doctors found no option but to cause amputation of his right leg. The disability certificate (Paper No. Ga 25/14 dated 05.06.2015) shows that his lower right leg below knee was amputated and his physical disability in medical terms, was found 50%.

16. Tribunal has recorded a finding that amputation of right leg has caused loss of earning to Claimant to the extent of 100% since it is not possible for him to discharge function of labour and he, being unskilled, is not expected to perform any other job.

17. Learned counsel for appellant suggested that when physical disability was only 50%, it is always open to Claimant to do any other sedentary job but when we enquired from him that a person who, in hierarchy of physical labour, at the lowest ebb, being an unskilled labour, what sedentary job can he perform, which may provide him livelihood, he could give no reply whatsoever.

18. The points of determination arisen in this appeal are:

(I) Whether Tribunal has erred in determining

compensation treating disability of Claimant, i.e., loss of capacity to earn, to the extent of 100% and applying relevant provisions accordingly or it should have confined to only 50% which was certified vide disability certificate due to amputation of right leg below knee.

(II) Whether compensation under different heads awarded by Tribunal necessarily should be the amount mentioned in Rule 220A of U.P. Rules, 1998 or the said Rules are directory and Tribunal can award appropriate amount of compensation other than what is mentioned in Rule 220A.

(III) Whether power of Tribunal to determine amount of compensation can be controlled, restricted or checked by subordinate legislation, i.e., by enacting rules, laying down specific amounts payable under different heads, in a claim petition under Section 166 read with Section 168 of Act, 1988.

19. It is admitted by parties that Claimant sought compensation by filing application under Section 166 of Act, 1988. Relevance of application under Section 166 is not without any reason. Broadly there are three provisions under Act, 1988 whereunder compensation can be awarded to a victim or his legal heirs, as the case may be.

20. Chapter X, having Sections 140 to 144, deals with the provisions relating to "liability without fault", in certain cases. Provisions under this Chapter have been given overriding effect by virtue of Section 144. Section 140(1) provides, where death or permanent disablement has resulted to a person from an accident arising out of use of a motor vehicle or motor vehicles, owner/owners of vehicle shall, jointly and severally, be liable to pay compensation, in respect of such death or disablement, in accordance with said section. Sub-section (2) provides a fixed amount of Rs. 50,000/- in case of death and Rs. 25,000/- in case of permanent disablement. In order to attract Section 140 there is no necessity or requirement to show that accident took place due to rash and negligent driving of tortfeasor vehicle. It recognizes principle of "no fault liability". The amount awardable thereunder is fixed by legislature itself. Liability is that of owner. Insurer does not come into picture when claim is made under Section 140. This "no fault liability" envisaged in Section 140 is distinct from the "rule of

strict liability". In other words, liability under Section 140 is a statutory liability. If an amount under Section 140 has been paid and thereafter claim is made under Section 166, amount paid under Section 140 is liable to be deducted from final amount of compensation awarded by Tribunal. The amount under Section 140 being a fixed/crystallized amount, same has to be considered as part of estate of deceased as held in **Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. and another, AIR 2007 SC 1474.**

21. Liability under Section 140 has to be borne by owner if vehicle was not insured or there was a breach of conditions of insurance. Though Section 140 makes owner of vehicle responsible for payment of compensation but if vehicle is insured, it is always open to owner to make Insurer liable to pay amount of compensation for the reason that once vehicle is covered under the terms of policy, it is for Insurer to make payment of liability of owner to the extent indicated in policy, be it under Section 166 or Section 140 of Act, 1988.

22. In the scheme of Act, 1988, Chapter X, by virtue of Section 140, contemplates earliest relief to a victim by awarding a fixed amount of compensation, if death or permanent disability has resulted from an accident arising out of use of a motor vehicle and for this purpose there is no requirement of pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of owner of vehicle.

23. Section 141 declares that right to claim compensation under Section 140 is in addition to any other right to claim compensation on the principle of "fault liability" but it only excludes right to claim compensation under Section 163A. In other words, if a compensation is claimed under "no fault liability" then either it can be an application under Sections 140 or 163A and not both. This is what has also been clarified in **The Oriental Insurance Co. Ltd. etc. vs. Hansrajhai V.Kodala and others, 2001(5) SCC 175.**

24. Section 142 classifies injuries which are considered "permanent disablement" for the purpose of Chapter X of Act, 1988.

25. By virtue of Section 143 of Act, 1988, benefit of "no fault liability" under Chapter X has also been

extended to a workman to claim compensation in respect of death or permanent disablement either by approaching Workman Compensation Commissioner under Workmen's Compensation Act, 1923 (hereinafter referred to as the "Act, 1923") or Tribunal under Act, 1988, by filing application under Section 140 of Act, 1988.

26. *Next provision under Act, 1988 is Section 161 read with Section 163, which is a special provision for compensation in case of a hit and run motor accident where identity of vehicle/ tortfeasor is not ascertainable despite reasonable efforts for the purpose. In this regard Section 163 empowers Central Government to make a scheme for payment of compensation in hit and run accident cases and subject to such scheme, Section 161(3) provides compensation of fixed sum of Rs. 25,000/- in case of death and Rs. 12,500/- in case of grievous injuries.*

27. *Initially when Act, 1988 was enacted there was no provision for compensation in case of "no fault liability" based on a structured formula which gives a scope for determination of compensation. By Act 54 of 1994, and w.e.f. 14.11.1994, Section 163A was inserted making special provision as to payment of compensation on structured formula. This Section commences with a "non-obstante" clause and overrides provisions of Act, 1988 or any other law for the time being in force or instrument having force of law. It says that owner of vehicle or authorized Insurer shall be liable to pay compensation as indicated in Second Schedule in case of death, to legal heirs and in case of permanent disablement, to the victim, as the case may be. Explanation to Section 163A(1) incorporates by Reference, meaning of "permanent disability" as provided in Act, 1923 to the word "permanent disablement" used under Section 163A of Act, 1988. For claiming compensation under Section 163A(1) claimant is not required to plead or establish that accident occurred due to any wrongful act, neglect or default on the part of owner of vehicle concern or of any other person.*

28. *There is a note appended to Second Schedule of Act, 1988, raising a legal fiction stating that injuries deemed to result in permanent total disablement/ permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule First under Act, 1923. In para 5 of Second Schedule of Act, 1988,*

provisions of First Schedule of Act, 1923 have been incorporated by reference. To attract Section 163A and to claim compensation thereunder, one has to establish factum of accident, age of deceased/ injured, as the case may be and his/her income. Broadly, these are the only relevant material factors to be brought before Tribunal for determining compensation under Section 163A.

29. However, while determining compensation, Tribunal has to consider relevant factors and it cannot be expected to go by a ready reckoner as held in **U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and others, 1996(4) SCC 362.**

30. Next provision relating to compensation is Chapter XII, i.e., Section 166 read with Section 165.

31. State Government has empowered by Section 165(1) to constitute one or more Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving death of, or bodily injury, to persons, arising out of use of motor vehicles or damages of any property of a third party so arising or both.

32. Section 166 provides that an application for compensation arising out of an accident of the nature specified in Section 165(1) may be made and these are:

"(a) by the person who has sustained the injury; or
(b) by the owner of the property; or
(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be."

33. Section 168 requires Tribunal to determine amount of compensation which appears to it, "just" after giving opportunity to parties including Insurer.

39. Section 168 contemplates determination of "just compensation". 'Just' means, fair, reasonable and equitable amount accepted by legal standards. "Just compensation" does not mean perfect or absolute compensation. "Just compensation" principle requires examination of particular situation obtaining uniquely in an individual case.

40. When compensation is to be determined on an application under Section 166, various heads under

which damages are to be assessed, have to be looked into by Tribunal and not by merely determining income and applying multiplier.

41. We may consider some broad aspects in the context of injury/ disability and death separately.

Bodily Injury/Disability

42. Here damages are broadly in two categories, i.e., pecuniary damages and special damages. Pecuniary damages are those which victim has actually incurred and which are capable of being calculated in terms of money. Pecuniary damages may include: (i) medical attendance; (ii) loss of earning profit upto the date of trial; (iii) other material loss.

43. Non-pecuniary damages are such which are incapable of being assessed by arithmetical calculation. They may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

48. This judgment has been referred to with approval in **Arun Kumar Agrawal and another Vs. National Insurance Company Limited and others, 2010(9) SCC 218.**

49. Besides above, there are two general heads which are applicable to all category of cases, namely, (i) litigation expenses and (ii) interest.

50. We have recapitulated broadly the relevant statutory provisions as also certain general principles for determining amount of compensation under the provisions of Act, 1988.

51. In the present case, application for determining compensation was admittedly filed under Section 166 and, therefore, Tribunal was under an obligation to determine "just amount of compensation". Whether this 'just' amount can be a mathematical calculation, as suggested by learned counsel for appellant, or, have to be

determined in the light of peculiar facts and circumstances of each and every case, though broadly following statutory guidelines, is a question which requires consideration.

52. Statutory provisions have been deviated while determining compensation on an application filed under Section 166 and a modified multiplier schedule has been provided in **Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation (supra)**.

53. The first question is regarding Rule 220A, whether Tribunal can go beyond it or not.

54. Rule 220A of U.P. Rules, 1998 reads as under:

"220-A. Determination of compensation--(1) The multiplier for determination of loss of income payable as compensation in all the claims cases shall be applied as per Second Schedule provided in the Act.

(2) Deduction for personal and living expenses of a deceased, shall be as follows--

(i) The deduction towards personal expenses of a deceased unmarried shall be 50% where the family of a bachelor is large and dependent on the income of the deceased, the deduction shall be 1/3 (33.33%).

(ii) The deduction towards personal and living expenses of a married person deceased shall be 1/3rd where dependent family members are 2 to 3 in number, 1/4th where dependent family members are 4 to 6 in number and 1/5th where dependent family members are more than 6 in number.

(3) The future prospects of a deceased, shall be added in the actual salary or minimum wages of the deceased as under--

(i) Below 40 years of age	50% of the salary,
(ii) Between 40-50 years of age	30% of the salary,
(iii) More than 50 years of age	20% of the salary,
(iv) When wages not sufficiently proved	50% towards inflation and price index.

(4) The non-pecuniary damages shall also be payable in the compensation as follows--

<i>(i) Compensation for loss of estate</i>	<i>Rs. 5000 to Rs. 10,000.</i>
<i>(ii) Compensation for loss of consortium</i>	<i>Rs. 5000 to 10,000.</i>
<i>(iii) Compensation for loss of love and affection</i>	<i>Rs. 5000 to 15,000.</i>
<i>(iv) Funeral expenses, costs of transportation of body</i>	<i>Rs. 5000 or actual expenses whichever is less.</i>
<i>(v) Medical expenses</i>	<i>actual expenses proved to the satisfaction of the Claims Tribunal.</i>

(5) For determination of compensation in case of injuries, partial or permanent disability provisions of Second Schedule of the Act shall apply:

Provided that the Claims Tribunal may also award compensation for future prospects according to sub-rule (3) in case of permanent disability depending upon the nature, extent and its effect on the future of disabled claimants.

(6) The rate of interest shall be 7% pendente lite and future till the actual payment."

55. As already pointed out U.P. Rules, 1998 have been framed in exercise of powers under certain Sections of Act, 1988 noted above. We may examine these sections separately.

56. Section 28 confers power of making rules upon State Government for the purpose of carrying into effect provisions of Chapter II other than the matters specified in Section 27. Chapter II, contemplates provisions of licensing of drivers of motor vehicles. In sub-section (2) of Section 28 certain specific subjects are mentioned but the same are also in the context of licensing of connected matters therewith.

57. Similarly, Section 38 confers power upon State

Government to make rules for the purpose of carrying into effect provisions of Chapter III. Sub-section (2) specifies certain subjects which also relates to matters concerned with Chapter III which deals with provisions of licensing of conductors of stage carriages.

58. *Then comes Section 65 which confers similar power upon State Government for framing rules for carrying into effect the provisions of Chapter IV relating to registration of motor vehicles.*

59. *Next is Section 95 which confers power upon State Government to frame rules as to Stage Carriages and Contract Carriages and conduct of passengers in such vehicles. This Section 95 is part of Chapter V which contains provisions relating to control of transport vehicles.*

60. *Section 96 confers power upon State Government to frame rules for the purpose of carrying into effect, provisions of Chapter V.*

61. *Section 107 confers power to frame rule for carrying into effect the provisions of Chapter VI which deals with special provisions relating to State transport undertakings.*

62. *Section 111 confers power upon State Government to frame rules regulating construction, equipment and maintenance of motor vehicles and Trailers, with respect to all matters other than the matters specified in sub-section (1) of Section 110. This Section 111 is part of Chapter VII which contains provisions of construction, equipment and maintenance of motor vehicles.*

63. *Section 138 confers power to frame rules upon State Government for the purpose of carrying into effect the provisions of Chapter VIII which contains provisions relating to control of traffic.*

64. *Section 176 is the only relevant provision which takes into its ambit Sections 165 to 174 which are part of Chapter XII relating to Claims Tribunal. Section 176 reads as under:*

"176. Power of State Government to make rules.—A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:—

(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed."

65. Lastly, it is Section 213 which is part of Chapter XIV, i.e., "Miscellaneous". Section 213 confers power upon State Government to establish a Motor Vehicles Department and appoint officers therefor as it thinks fit.

66. As we have already discussed, Section 176 nowhere specifically confers power upon State Government to make a provision which may control a Claim Tribunal in the matter of determination of amount of compensation under Section 168 which is the judicial adjudicatory authority conferred upon Tribunal by Principal Legislature.

67. In **R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and others**, 1995(1) SCC 551 it was observed that process of determination of amount of compensation involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused but all aforesaid elements have to be viewed with objective standards. Process of determination involves a reasonable estimate and a justifiable guess work on the part of Tribunal. In the nature of claims involving fatal accident cases, what is required is determination of "what would have been" and not "what actually is". However, approach has to be pragmatic and sympathetic. Court is expected not only to take fortuitous circumstances and good possibilities of future, the advantages in favour of deceased as well as dependents but also the unexpected misfortunes that may happen. Taking all these aspects into account, a fair and justifiable conclusion, striking a fair balance, tranquilised with a sympathetic chord, but devoid of all

emotionalism, sensationalism and melodramatic blood and thunder, has to be arrived at by Tribunal. These factors to some minor modification may apply in the case of permanent disability also.

68. *Broadly it has been observed that in deciding, what damages should be awarded to a claimant, same should be tested on three principles, first, that the award should be moderate, just and fair and it should not be oppressive to respondent, second, award should not be punitive, exemplary and extravagant and third, as far as possible similar cases must be decided similarly so that community of public at large may not carry the grievance of discrimination.*

69. *The question of determination of compensation directly came up before Supreme Court in **Raj Kumar Vs. Ajay Kumar and another**, 2011(1) SCC 343. Therein, claimant sustained fracture of both bone of left leg and fracture of left radius in a motor accident on 01.10.1991. Tribunal awarded compensation under the heads of loss of future earning, pain and sufferings, loss of earning during period of treatment, medical expenses, conveyance and special diet. He was awarded total compensation of Rs. 94,700/- and 9% interest. His appeal for enhancement was rejected by Tribunal and ultimately went in appeal to Supreme Court. It observed that scheme of Act, 1988 shows that award must be "just", which means that compensation should, to the extent possible, fully and adequately restore claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A person is not only to be compensated for physical injury, but also for the loss which he suffered as a result of such injury. It means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation needs be awarded in "personal injury" cases are detailed in para 6 of the judgment in **Raj Kumar Vs. Ajay Kumar (supra)** and it reads as under:*

"6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) *Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*

(a) *Loss of earning during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses.*

Non-pecuniary damages (General Damages)

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

70. *"Disability" refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. "Permanent disability" refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of period of treatment and recuperation, after achieving maximum bodily improvement or recovery which is likely to remain for remainder life of injured. Permanent disability can be either partial or total. "Partial permanent disability" refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. "Total permanent disability" refers to a person's inability to perform any avocation or employment related activities as a result of the accident.*

71. The percentage of disability certified in medical terms has been considered and Courts have observed that percentage of disability in respect of a part of body does not mean the same percentage with respect to whole body and it may be different. Para 9 of judgment in **Raj Kumar Vs. Ajay Kumar (supra)** said as under:

"9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. **When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body.** The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%." (emphasis added)

72. Court also castigated that Tribunals wrongly assume that percentage of permanent disability is same in terms of percentage of loss of future earning capacity. The two aspects are different. Relevant observations in para 10 of the judgment in **Raj Kumar Vs. Ajay Kumar (supra)** are reproduced as under:

"10. Where the claimant suffers a permanent disability as a result of injuries, the **assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity.** The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, **the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability.** Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability

would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation." (emphasis added)

73. Court also held that in some cases evidence and assessment may show that percentage of loss of earning capacity as a result of permanent disability is approximately the same as percentage of permanent disability and in that case said percentage for determination of compensation may be adopted but it is not always. It is in this context Court further said that in order to determine, whether there is any permanent disability and if so the extent of such disability, a Tribunal should consider, and decide, with reference to evidence:

"(i) whether the disablement is permanent or temporary;
(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person."

74. It was also observed that ascertainment of the effect of permanent disability on actual earning capacity involves three steps. First is to ascertain what activities claimant could carry on inspite of permanent disability and what he could not do as a result of permanent disability. The second is to ascertain claimant's avocation, profession and nature of work before accident, as also his age. The third step is to find out whether claimant is totally disabled from earning any kind of livelihood or despite permanent disability, claimant could still effectively carry on activities and functions, which he was earlier carrying on and whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

75. The role of Tribunal was elaborated by observing that it is not a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Tribunal does not function as a neutral umpire as in a civil suit. It is an active explorer and seeker of truth who is required to hold an enquiry into the claim for determining 'just compensation'. Tribunal should take an active role to ascertain the true and correct position so that it can assess 'just compensation'. Court also observed that when a doctor gives evidence about percentage of permanent disability, Tribunal must find out whether such percentage of disability is functional disability with reference to whole body or whether it is only with reference to a limb. In para 19 of the judgment in **Raj Kumar Vs. Ajay Kumar (supra)** Court summarized the principles in respect of "permanent disability" and assessment of compensation and in para 20 it gives certain illustrations in regard to assessment of loss of future earning. Same are reproduced as under:

"19. We may now summarize the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the **percentage of loss of earning capacity is not the same as the percentage of permanent disability** (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of

profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration 'A': The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

<i>a) Annual income before the accident</i>	<i>Rs. 36,000/-</i>
<i>b) Loss of future earning per annum (15% of the prior annual income)</i>	<i>Rs. 5400/-</i>
<i>c) Multiplier applicable with reference to age</i>	<i>17</i>
<i>d) Loss of future earnings: (5400x17)</i>	<i>Rs. 91,800/-</i>

Illustration 'B': The injured was a driver aged 30 years, earning Rs. 3000/-per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

<i>a) Annual income before the accident</i>	<i>Rs. 36,000/-</i>
<i>b) Loss of future earning per annum (75% of the prior annual income)</i>	<i>Rs. 27,00/-</i>
<i>c) Multiplier applicable with reference to age</i>	<i>17</i>

d) Loss of future earnings: (27,000x17)	Rs. 4,59,000/-
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Illustration 'C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a) Minimum annual income he would have got if had been employed as an engineer	Rs. 60,000/-
b) Loss of future earning per annum (70% of the expected annual income)	Rs. 42,000/-
c) Multiplier applicable (25 years)	18
d) Loss of future earnings: (42,000x18)	Rs. 7,56,000/-

Note: The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra).

76. A three Judge Bench considered the question of "just compensation" in a case of permanent disability in **Sanjay Verma Vs. Haryana Roadways, 2014(3) SCC 210**. Court observed that besides determination of damages under the head "loss of income" and "medical expenses", Tribunal must also award compensation under the head "future treatment" and "pain and sufferings" and where there is requirement of an attendant, cost of attendant should also be included for award of compensation.

77. In **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Ltd., 2014(2) SCC**

735, claimant sustained injuries in a road accident on 14.02.2008 to lower end of right femur and his right leg was amputated. Medical certificate, verified 24% disability to upper limb and 85% to lower limb. Claimant therein was a Vegetable Vendor. Tribunal allowed compensation treating disability of whole body at 30%, which was enhanced by High Court to 65%. Supreme Court said that a Vegetable Vendor might not require mobility to the extent that he sells vegetables at one place but the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from whole-sale market or farmers and then selling it off in retail market. This often involves selling vegetables in cart which requires 100% mobility. Court said that even if it is presumed that vegetable vending by claimant involved selling vegetables from one place, claimant would require assistance with his mobility in bringing vegetables to market place which otherwise would be extremely difficult for him with an amputated leg. Court further observed that in manual labour cases, loss of limb is often equivalent to loss of livelihood. In that case Court upheld disability of 85% since claimant was capable to earn his livelihood once he is brought in market place.

79. In **Sanjay Kumar Vs. Ashok Kumar and another, 2014(5) SCC 330** claimant sustained injuries resulting in amputation of right leg above knee. As per Entry 18 in Part II of Schedule I of Act, 1923, loss of earning capacity was assessed as 70% and Tribunal determined compensation accordingly. Claimant was an Embroider, a skilled workman. Court upheld 70% disability and loss of earning capacity. One more aspect was added that claimant may need assistance in order to travel and move around, regular check-ups and will most likely use a crutch to walk, all of which will incur expenses. It is also a factor which is bound to cause loss of marriage prospects, which is a major loss, keeping in mind the young age of claimant. Thus under the head of loss of future prospect, Court awarded compensation separately to Rs. 75,000/-. It was also observed that amputation, i.e., loss of a limb causes a profusion of distress and claimant has to deal with same for rest of his life. He might have to deal with discrimination and stigma in society due to the fact that he is an amputee. Claimant, therefore, was also allowed compensation of Rs.

1,00,000/- towards loss of amenities. The injury has permanently disabled claimant, reducing his enjoyment of life and full pursuit of all activities he engaged in prior to accident.

81. In the light of aforesaid concept of determination of compensation which should be "just" and having been held, a statutory obligation of Tribunal, we find it difficult to accept that such statutory obligation of Tribunal can be restricted, checked or controlled by subordinate delegated legislation, by making a rule, specifying a particular amount and excluding scope of determination of "just compensation" under respective heads for which rule is framed.

82. A delegated/ subordinate legislation neither can create substantive rights and obligations nor can enhance efficacy or reduce normal functional ambit of principal legislation. A Full Bench of this Court in **Chandra Kumar Sah and another Vs. The District Judge and others**, AIR 1976 All 328 held that when a rule framing power is conferred upon State Government to make rules to carry out the purposes of this Act, it does not give carte blanche to enact independent legislation. The expression "to carry out the purposes of the Act" means to enable its provisions to be effectively administered. They connote that rules are to be confined to the same field of operation as that marked out by Act itself. Court further observed in para 11 as under:

"11. This power will authorise the provision of subsidiary means of carrying into effect what is incidental to the execution of its specific provisions. But **such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary the plan which the legislature has adopted to attain its ends Shanahan v. Scott** (96 Com WLR 245). In other words a subordinate law cannot substantially modify the scheme or policy of the Act." (emphasis added)

83. In **Global Energy Limited and another Vs. Central Electricity Regulatory Commission**, 2009(15) SCC 570, Court in para 25 of judgment, with regard to power of delegated legislation, said as under:

"25. It is now a well settled principle of law that the rule making power "for carrying out the purpose of the

Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the **regulation making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.**" (emphasis added)

84. In *Kunj Behari Lal Butail vs. State of H.P.*, 2000(3) SCC 40, a three Judge Bench of Court, said:

"14. We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

85. As we have already noted that under Section 176 of Act, 1988, power of framing rules in the context of Sections 165 to 174 has been conferred but subjects specified nowhere talks of fixation of amount towards compensation by way of rule, on the part of State Government. When Act contemplates and confers this power upon Tribunal, since compensation has to be determined by process of adjudication, it cannot be said that by fixing certain amount towards compensation under different heads by State Government by framing rule, it has exercised its power to carry out performance of relevant provisions of Act. On the contrary, it runs otherwise. Since there is no challenge to the rules in the case in hand, therefore, we find it appropriate to read Rule 220A, at the best, as a guideline, but ultimate adjudication/ determination has to be made by Tribunal, on the question of amount of compensation which is "just" and payable to claimant.

86. Section 168 confers power upon Tribunal to determine "just" compensation. We are of the view that State Government in exercise of rule framing power cannot control, and exclude scope of determination by Tribunal of "just compensation" under various heads. The attempt of rule making authority in controlling function of Tribunal making a rule, is beyond its competence and would render such Rules ultra vires of Section 168. Hence, in order to read rules in question in harmony, we have no option but to hold that Rule 220A of U.P. Rules, 1998 lays down only a guideline with

respect to award of compensation under different heads but ultimate authority is that of Tribunal to determine and award appropriate compensation which is "just".

87. *Now so far as question of 100% disability is concerned, Tribunal has recorded a finding that claimant is an unskilled labourer. Amputated leg has resulted in a total loss of earning capacity. Now the claimant will require assistance throughout his life. Hence a long term additional expense has got burdened upon him. Tribunal has rightly discussed that disability is not to be judged from mere medical disability certificate issued by doctor but it is the bodily disability and capacity to earn livelihood.*

88. *Learned counsel for appellant when insisted upon that amputation of one leg would not mean that claimant cannot work at all, we asked him, whether appellant, a very big public sector undertaking, would like to provide an appropriate employment to claimant, if it is of the view that claimant still has not lost his total capacity to earn livelihood and if that can be offered, claimant may be persuaded to give up his case for compensation learned counsel said that appellant-Corporation, if accept it, will become a hub of such persons and this will cause serious obstruction in its functioning.*

89. *Before parting, we also find it appropriate to place on record a suggestion that now a days in the cases of amputation of limb etc., artificial limbs are available, with the help whereof, level of dependency of disabled person can get reduced to some or large extent.*

90. *We can take judicial notice of the facts that in some cases artificial limbs have helped disabled person in removing his dependency, many a times, completely. Some persons, whose leg/legs got amputated, we have illustrations available, where with use of artificial limbs, they have achieved expertise in Athletics, Classical Dance and other vocations. Purpose of social welfare legislation is to find out ways and means to help the sufferer in all possible fields. In case of disability of a person, if Tribunal finds, with medical advice, that artificial limb can procure his self dependency, all possible attempts should be made to get it executed and whatever necessary expenses, it require, must be treated to be a part of compensation which should be allowed against the persons liable to pay compensation. In this*

case also we could have resorted to this exercise but this is not an appeal of claimant but has been filed by Insurer with a view to get quantum of compensation, already awarded, reduced and it will not be appropriate for us to consider it other way. However, we direct various Motor Accident Claims Tribunals that they should explore possibility of getting artificial limbs implanted and to award cost and expenses thereof also by way of compensation so that compensation under the head of Assistance etc. may get diluted and claimant, after implantation of artificial limb, may have a satisfaction of earning livelihood honourably by his sheer dint and labour, despite disability.

91. We direct Registrar General to circulate a copy of this judgment to respective Motor Accident Claims Tribunals in the State.

92. In the result, questions formulated above are answered against appellant.

93. Appeal lacks merit. Dismissed.

94. However, there shall be no order as to costs."

19. A reference also will have to be made to the judgment relied by Sri Rakesh Bahadur-Advocate regarding nonjoinder of driver and his deletion on the effect of proceedings by this High Court in **Pushpa Devi(supra)**.

20. The decision of this High Court whereby the matter was remanded will have no applicability as the facts disclose in our case that the driver was a party and he was later on deleted. However, the question whether Rule 204 of the Rules has to be given literal meaning, the Division Bench in ICICI Lombard (supra) has also applied the Rules for the benefit of the claimant though vehemently opposed by counsel for Insurance Company. In that backdrop, let us examine that in case a driver is not joined, as party, whether the entire judgment will be rendered *non est* and whether the Tribunal is under a compulsion to see that the driver is before it, the answer can be found in law of torts and interpretation of Statutes. It is a cardinal

principle of interpretation of statute that welfare legislation should not be defeated by subtle devices which are permitted to be used by insurance companies which is being done in the present case. The construction to extreme limit cannot be gone into so as to defeat the legitimate claim of a claimant. Further, a social welfare legislation is a legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions but to advance the intent. Expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute.

21. The judgment in **Pushpa Devi (Supra)** cannot be made applicable to the facts of this case, the ratio of that case does not discuss any case law but has simply accepted the submission of the counsel for the appellant by holding that the Rules are applicable retrospectively. The said judgment may also be tested on the touchstone of judgment in **Josphine James (Supra)** wherein the Apex Court has held that the non-impleadment of the driver of the vehicle is not fatal to the proceedings as the liability of the owner and the insurer of the offending vehicle is joint and several. Thus, it can be said that the judgment in **Pushpa Devi (Supra)** cannot be mechanically applied to the facts of this case and I can venture to hold it is a per incurium judgment also as it did not consider **Josphine James (supra)** and a reference to law of torts will also be necessary and form 48 of the Rules, 1998 which nowhere prescribes description of a driver and, therefore, the Rule 204 using the term 'Shall' has to be read as 'May' otherwise it will make entire beneficial legislation nugatory. I am supported in my view by the decision of Bombay High Court in **The New India Assurance Company vs Sitaram Devidayal Jaiswal and others** decided on 21 November, 2011.

22. Hence, the submission of Sri Rakesh Bahadur that the matter should be remanded by quashing the judgment has no merit and is an afterthought and nor was it raised when appeal was preferred or driver was deleted.

23. The submission of Sri Rakesh Bahadur-Advocate that the amount has to be fixed as per the Rules more particularly Rule 220(4) requires to be evaluated in view of the judgment of the Division Bench of this Court both in **ICICI Lombard (Supra) and National Insurance Company Limited, Lucknow (Supra)** where it has been held that Rules are applicable for benefit of the claimants. In **ICICI Lombard (supra)** the submission of Sri Rahul Sahai that the Rules were not to be applied was rejected. The decision in ICICI Lombard (supra) has held that change of law which occurred during the pendency of the litigation has to govern the rights of the parties and it has relied on AIR 1985 SC 111 to hold in favour of the claimant. It was only for allowing addition to the amount of the deceased. It interpreted the applicability of the Rule for the benefit of the claimant and not to defeat his claim as has been buttressed by Sri Rakesh Bahadur in case on hand. The IIInd Schedule has been held to be unworkable long back. Hence, the submission that medical expenses cannot be more than Rs.15,000/- and amount under other pecuniary heads cannot exceed the amount fixed in the II Schedule of the Act, 1988, cannot be accepted as this Court in an appeal will have to decide on justness of compensation. This is not even a ground raised in appeal and this being a question of fact cannot be allowed but Insurance Companies are in habit of instructing its counsel to make submission which may be even contrary to the discussions of this Court and Apex Court.

24. A mention requires to be made to the fresh Notification dated

22.5.2018 to the IIInd Schedule more particularly on and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually.

25. The submission that the Tribunal has awarded 9% rate of interest is bad and it should be 7% and for that reliance is placed on the Rules, 1998. This High Court and the Apex Court in catena of decisions enumerated herein below have interpreted as to what would be the correct rate of interest.

26. In **ICICI Lombard (Supra)** relied by Sri Rakesh Bahadur Tribunal had awarded interest at the rate of 6% per annum on the amount of compensation from the date of filing of claim petition. The High Court enhanced it to 7% in the said matter. Hence, it was not in derogation or against the benefit of the claimant.

27. It is found that Courts have held that appropriate rate of interest should be 9%. from the date of filing of claim petition till deposit of the amount. Reference be made to the following decisions.:

28. In **Neeta Vs The Divisional Manager, MSRTC (2015) 3 SCC 590** where accident took place on 22.03.2011, Court allowed 9% rate of interest and held that interest awarded by Tribunal at 8% was erroneous. Para-11 of the judgment reads as under:-

"The appellants are also entitled to the interest on the compensation awarded by this Court in these appeals at the rate of 9% per annum along with the amount under the different heads as indicated above. The Courts below have erred in awarding the interest at the rate of 8 % per annum on the compensation awarded by them to the Appellants without

following the decision of this Court in Municipal Corporation of Delhi, Delhi Vs. Uphaar Tragedy Victims Association and Ors. MANU/SC/1255/2011: (2011) 14SCC 481. Accordingly, we award the interest at the rate of 9% per annum on the compensation determined in these appeals from the date of filing of the application till the date of payment."

29. In **Kanh Singh Vs. Tukaram, 2015 (1) SCALE 366** where accident had taken place on 02.07.2006 but tribunal awarded no interest. Court held that this is erroneous and 9 % interest should have been allowed in view of the principles laid down in **Municipal Corporation of Delhi Vs Association of Victims of Uphaar Tragedy (2011) 14 SCC 481**.

30. In **Kalpanaraj and Others Vs Tamil Nadu State Transport Corporation (2015) 2 SCC** where accident took place on or before 1994, High Court had awarded interest at the rate of 9 % per annum which was challenged that it is on higher side. Court upheld said rate of interest.

31. In **Shashikala and Others Vs Gangalakshamma and Another (2015) 9 SCC 150**, where accident had taken place on 14.12.2006, Court allowed 9 % rate of interest from the date of claim petition till the date of realization.

32. In **Asha Verman and Ors Vs Maharaj Singh & Ors, 2015 (4) SCALE 329**, High Court awarded interest at the rate of 8 % . Accident took place on 27.11.2016. It was held that 8 % interest is on lower side and it should be 9 %.

33. In **Surit Gupta Vs United India Insurance Company (2015) 11 SCC 457**, accident took place in July, 1990. Punjab and Haryana

High Court had awarded interest at the rate of 6 %. Court held that it is on lower side and it should be 9 %.

34. In **Chanderi Devi and another Vs Jaspal Singh and others (2015) 11 SCC 703**, date of accident is September 2006 and the incumbent died on 04.10.2006. Court awarded 9 % interest.

35. In **Jitendra Khimshankar Trivedi Vs Kasam Daud Kumbhar and Others (2015) 4 SCC 237**, incident was on 21.09.1990. Tribunal awarded 15 % interest which was reduced to 12% by Gujrat High Court. Court held that it is on higher side and awarded 9 % interest following its decisions in **Amresh Kumari Vs Niranjan Lal Jagdish Parshad Jain 2010 ACJ 551 (SC)** and **Mohinder Kaur Vs Hira Nand Sindhi (2007) ACJ 2123 (SC)**.

36. I am even supported by the recent decisions of this High Court and the Apex Court in the cases of **Oriental Insurance Company Limited Versus Anil Kumar Maheshwari(Allahabad), 2018 ACJ(Alld.)2707**, **Mishri Lal Yadav Versus Oriental Insurance Company Limited, 2018 ACJ(Alld.)2856**, **Magma General Insurance Company Limited Versus Nanu Ram, 2018 ACJ(SC) 2782** and **Nutan Rani Versus Gurmail Singh, 2018 ACJ(SC) 2436**.

37. In view of above, the rate of interest in the present case being 9% awarded by Tribunal also cannot be disturbed and in that view interest should be paid at 9 % per annum. The submission of Sri Rakesh Bahadur Counsel for the appellant requires to be rejected as also the submission of the counsel for the claimant claiming 24% rate of interest also requires to be rejected.

38. This takes this Court to the justness of compensation and the application filed by Insurance Company under Order 41 Rule 27 of C.P.Code. Though the investigator is not examined, the report given

by him is perused which does not give a finding that the amount claimed by the husband of the claimant was for the expenses incurred by the claimant (his wife). The Report which sanctions the amount shows that it is for Mr. S.K. Mishra, the driver which is at page 79 of the application. The amount, therefore, cannot be said to be twice claimed by claimant. The investigator has nowhere stated and he has come to a definite conclusion that amount of Rs.1,27,000/- and odd which was sanctioned as special case was for exclusive treatment of the claimant herself. Hence, the said submission fails. These oral submissions have been considered and are rejected. It is not that the Rules were not on the Statute book. The Insurance Company had not raised this issue of deletion of the driver, this Court heard argument on those grounds, they could not have been raised in view of the judgments prevailing as of today. More particularly of the Apex Court and this High Court holding that 3rd party interest cannot be defeated just because there is absence of driver.

39. This takes this Court to the grounds urged in memo of appeal namely that the compensation granted could not have been granted. Let us test those grounds on the touchstone of the principles enunciated by this Court in First Appeal No.199 of 2017(supra).

40. The Tribunal has granted the amount namely Rs.1,00,000/- for medicines, Rs.10,000/- under the head of pain shock suffering and for upbringing of her child by granting multiplier of 11 but has granted only Rs.50,000/- under that head. It has granted Rs.1,27,500/- for loss of income is it just compensation ? a young lady of 35 years of age has lost her one foot. The medical evidence shows that there is amputation, the Tribunal unfortunately has granted a sum of Rs.10,000/-(ten thousand) under the head of pain shock suffering. This itself shows that the Tribunal was insensitive to the apathy of the lady.

41. The grounds no. 1, 3 and 4 raised in memo of appeal they are taken together. The Tribunal has considered her notional income and the permanent disability. The grounds themselves are unsustainable in view of the judgment of Apex Court in **Raj Kumar Vs. Ajay Kumar and another, 2011(1) SCC 343** wherein in paragraph no.6 the following principles are enunciated.

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).”

42. The medical bills and vouchers cannot be found fault with as it has not been proved by the Insurance Company that they were either forged or fabricated.

43. The ground nos. 4 and 5 have been answered that the lady did not obtain any amount under the medical reimbursement from her husband's organization, the same is not being proved by the Insurance Company. Hence, ground nos. 4 and 5 are rejected. The ground nos. 6, 7 and 8 have been answered earlier.

Enhancement in absence of written cross objection or appeal :-

44. It is submitted that the amount which is granted is not just compensation and it is orally submitted that the amount of compensation requires to be enhanced in light of Division Bench decision of this High Court in **First Appeal From Order No.2389 of 2016 (National Insurance Co. Ltd. Versus Smt. Vidyawati Devi And 2 Others) decided on 27.7.2016** wherein it is held that under Order 41 Rule 33 of Code of Civil Procedure, amount of compensation can be enhanced even if there is no written appeal or written cross objection. This applies to this case also recently it has been held by Apex Court in **North East Karnataka Road Transport Corporation Vs. Smt. Sujatha, AIR 2018 SC 5593** that for beneficial legislation the Court should grant enhancement even if other side is not present.

45. The principles of law pertaining to grant of just compensation cannot be said to have been adhered by Tribunal and therefore, it will have to be re-decided as per the decision in First Appeal From Order No.2389 of 2016 (National Insurance Co. Ltd. Versus Smt. Vidyawati Devi And 2 Others) decided on 27.7.2016.

46. I am in complete agreement with the submission of Sri Krishna Mohan Rai, learned counsel for claimant and now proceed to decide the quantum afresh. Recently and even in the judgment which I have heavily relied, namely, in First Appeal From Order No. 199 of 2017 (National Insurance Company Limited, Lucknow Vs. Lavkush and another).

47. In the case on hand, the disability of the lady is permanent as she has amputation of lower limb, her notional income though is on the lower side is not disturbed. However under the head of pain shock suffering, she is entitled to a sum of Rs. 1,00,000/- as held by Apex Court in **Syed Sadiq Versus Divisional Manager, United India**

Insurance Company Limited, AIR 2014 SC 1052 and therein in paragraph 9 will have to be looked into.

48. In this case a sum of Rs.1,00,000/- for pain shock suffering and for artificial limb is to be granted and Rs.50,000/- under all other heads as enumerated in **Raj Kumar (supra)** and National Insurance Company Limited, Lucknow Vs. Lavkush and another (**supra**) is granted.

49. The appeal of the Insurance Company is dismissed. The oral enhancement request is accepted in the light of Division Bench decision of this High Court in **First Appeal From Order No.2389 of 2016 (National Insurance Co. Ltd. Versus Smt. Vidyawati Devi And 2 Others) decided on 27.7.2016**. Hence, additional amount of Rs.1,50,000/- be paid to the claimants with interest at the rate of 9% from the date of claim petition till the decision and 6% thereafter till the amount is deposited.

50. The appeal is dismissed. The oral cross objection is allowed in view of the judgment in FAFO No.2389 of 2016 holding that even without filing of written cross objection just compensation can be awarded. I am even supported in my view by the latest decision of Apex Court in **North East Karnataka Road Transport Corporation (supra)**.

51. This Court is thankful to Sri Rakesh Bahadur-Advocate who took extra efforts to see that this Court makes research and interprets and lays down correct law and guidelines for Tribunal by placing reliance on Rules, 1998 and the two decisions of this High Court are also considered as though in the grounds of appeal these contentions were never raised nor they were agitated before the Tribunal and made me make research so that I could lay my hands on the Notification of Central Government as it relates to schedule II under Section 163A of the Act, 1988. Therefore also the Rules of Uttar Pradesh if also made

[44]

applicable have to be read along with fresh Notification mentioned herein above.

Order Date :-15.3.2019 /Mukesh/DKS