Supreme Court of India Deepal Girishbhai Soni And Ors vs United India Insurance Co. Ltd., ... on 18 March, 2004 Author: S.B. Sinha Bench: Cji, S.B. Sinha, S.H. Kapadia. CASE NO.: Appeal (civil) 3126 of 2002

PETITIONER: Deepal Girishbhai Soni and Ors.

RESPONDENT: United India Insurance Co. Ltd., Baroda

DATE OF JUDGMENT: 18/03/2004

BENCH: CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT: J U D G M E N T with C.A. No. 3127 of 2002, R.P. (C) No. 160 of 2002 in C.A. No. 2573 of 2001, R.P. (C) No. 161 of 2002 in C.A. No. 2572 of 2001 and C.A. No.1680/2004 (arising out of S.L.P. (C) No. 708 of 2003) S.B. SINHA, J : Leave granted in S.L.P. (C) No. 708 of 2003. Reference to this Bench : A Division Bench of this Court by an order dated 19.04.2002 doubting the correctness of 2-Judge Bench decision in Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and Others [(2001) 5 SCC 175] (Kodala) has referred the matter to a 3-Judge Bench whereby and whereunder the proceedings under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to and called for the sake of brevity as "the Act") has been held to be a final proceeding as a result whereof the claimants had been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 165 thereof. Subject matter : The appeals arise out of judgment and order dated 9.11.2000 passed by the High Court of Gujarat at Ahmedabad in First Appeal No. 2272 of 2000 whereby and whereunder the claims of the appellants have been calculated limiting the income of the deceased at Rs.40,000/- per annum.. Two review applications have also been filed seeking review of the judgment and order passed in Kodala's case (supra). An application under Article 136 of the Constitution of India has also been filed marked as S.L.P. (C) No. 708 of 2003 arising out of the judgment and order dated 28.8.2002 passed by the High Court of Himachal Pradesh in F.A.O. [MVA] No. 181 of 2001. Background Fact : The fact of the matter may be noticed from C.A. No. 3126 of 2002. The parents of the appellants herein met with an untimely death in an accident arising out of use of a motor vehicle on or about 4.9.1998. The appellant No. 1 was at the relevant time a major and the other three appellants were minors. The appellants filed two claim petitions; one under Section 163-A of the Act and the other under Section 166 thereof claiming compensation for a sum of Rs. 4,97,800/- for the death of their mother, Ms. Prabhaben as also a sum of Rs. 17, 30,900/- for the death of their father, Shri Girishbhai Soni. Proceeding on the basis that in terms of Section 163-A of the Act, merely an interim relief was to be granted, the Motor Accidents Claim Tribunal in MAC Petition No. 2133/1998 and M.A.C. Petition No. 2134/1998 vide its order dated 24.3.2000 awarded a sum of Rs. 4,20,500/- and Rs. 11,74,500/- respectively with interest at the rate of 12% per annum from the date of the application till realisation. It is not in dispute that although while passing the said order the learned Tribunal considered the matter also on their own merits but directed that the applica-

tions filed by the appellants herein purported to be under Section 166 of the Act would be determined separately. The respondent - Insurance Company being aggrieved by and dissatisfied with the said order dated 24.3.2000 preferred appeals before the High Court of Gujarat at Ahmedabad. By reason of the impugned judgment, the High Court having regard to the concession made at the bar to the effect that in view of the cap of annual income of Rs. 40,000/- as contained in the Second Schedule appended to the Act, the awarded amount should be reduced to Rs. 3,24,500/- from Rs. 4,20,500/- and to Rs. 3,78,500 from Rs. 11,74,500/- respectively. While modifying the order of the Tribunal in each of the said appeals, the High Court clarified that the said sum would be paid to the appellants herein by way of interim compensation observing: "It is also observed that as has been agreed between the parties this whole amount as indicated above shall be disbursed to the respondents at this stage itself as per the apportionment ordered by the Tribunal for respective respondents and there is no need to invest 70% of the amount in the fixed deposit etc., as has been ordered by the Tribunal and 100% of this amount i.e., Rs. 3,24,500/- in First Appeal No. 2272 of 2000 and Rs. 3,78,500 in First Appeal No. 2273 of 2000, shall be disbursed to the respondents in each of these two matters respectively. It may also be made very clear that in view of the agreed position between the parties, we have not embarked upon the question of interpreting Section 163-A and the Schedule and without entering into the exercise of interpreting the relevant provisions we have passed this order only because both the sides have shown a good gesture before us. At the time of awarding of compensation under section 166 of the Act all the contentions factual and legal as may be available to the respective parties are open to be agitated when the main petitions are considered by the Tribunal." Submissions : Mr. Gaurab Banerjee, learned senior counsel appearing on behalf of the appellants and Mr. G.L. Sanghi, learned senior counsel appearing on behalf of the review petitioners would take us through the legislative history leading to enactment of Section 163-A of the Motor Vehicles Act and submit that the same is indicative of the fact that an order passed thereunder is interim in nature. The learned counsel would urge that the said Act being a beneficent legislation deserves liberal construction and in that view of the matter the remedy available to a claimant against a tort feasor for obtaining a 'just' compensation in terms of Section 166 of the Act cannot be taken away only because an interim award has been made in terms of Section 163-A of the Act as in the said proceeding actual loss suffered by the victim is not adjudicated upon and merely 'adequate compensation' on a structured formula is to be paid thereunder. The learned counsel would point out that the said Act provides for exercise of an option limited only to filing of a claim application under Section 140 and Section 163-A, and, thus, the remedy under Section 166 is not barred. The learned counsel would contend that a ceiling has been provided in the Second Scheduled so far as income of the victim is concerned to the extent of Rs. 40,000/- per annum is also indicative of the fact that the compensation payable thereunder is only interim in nature and the sum awarded in the said proceeding is to be adjusted as and when a final award is passed in terms of Section 168 of the Act. The learned counsel

would submit that it is judicially accepted that the Second Schedule appended to the Act contains a large number of anomalies and in that view of the matter a proceeding under Section 163-A should not be held to be a final one. Mr. Banerjee would urge that upon a proper analysis of the scheme of the Act it would appear that the concept of 'no fault liability' is envisaged both under Section 140 of the Act and Section 163-A thereof and the proceeding thereunder being alternative to each other providing for identical rights and liabilities, an order under Section 140 being not final; there is no reason as to why an award made under Section 163-A thereof should be treated to be final. The learned counsel would contend that the Bench in deciding Kodala (supra) not only failed to take into consideration the legislative history of the Act but also mis-interpreted the scheme and structure thereof. The Bench in Kodala (supra), the learned counsel would argue, furthermore failed to consider the effect of the Act which is beneficent in nature and, thus, was required to be construed liberally. Right to prosecute a remedy under common law must be barred either expressly or by necessary implication and such a bar having not been provided as regard a proceeding under Section 163-A of the Act, it is inconceivable, the learned counsel would submit, that a remedy provided for under the statute would not be made available to the suitor. The learned counsel would contend that the Bench deciding Kodala (supra) misinterpreted and misconstrued the expression "any other law" appearing in Sub-Section (5) of Section 140 to mean "any other law for the time being in force as, for example, the Workmen's Compensation Act, 1923". The said expression, the learned counsel would contend, would embrace also the other provisions of the said Act. According to the learned counsel, the expressions "any other law" would by necessary implication include the other provisions of the Motor Vehicles Act having regard to the fact that the remedies provided for under Sections 163-A and 166 are distinct and separate and are based on different legal regimes. It was pointed out that whereas under the former "adequate and rational compensation" is provided for, the latter provides for "just compensation". Mr. Jitendra Sharma, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that Section 163-A which was introduced by the Parliament in the year 1994 carries absolutely a different scheme vis-'-vis 'no-fault liability' introduced in the year 1982 in Motor Vehicles Act, 1939 which was in pari materia with Section 140 in the 1988 Act. By enacting Section 163- A, Mr. Sharma would contend, an exception to the provisions of Section 166 was made out for the purpose of implementing the principles of social justice. Drawing our attention to the Second Schedule appended to the Act, the learned counsel would submit that the very fact that in terms thereof, one-third of the total income is to be excluded from the total amount of compensation and further certain provisions relevant for computation of total amount of compensation payable thereunder have been provided for, is not itself suggestive of the fact that thereby the payment directed thereunder is not by way of an interim or on account payment but is a final one. LEGISLATIVE HISTORY: A claim for damages owing to injuries suffered by reason of negligence on the part of the driver of a motor vehicle used to be governed only by law of tort. The Indian Motor Vehicles Act,

1914 is the first enactment relating to motor vehicles. The Motor Vehicles Act, 1939 which replaced the 1914 Act consolidated and amended the law relating to motor vehicles in India. Under the 1939 Act as also the Fatal Accidents Act, 1855 compensation was solely based on law of tort. The civil courts had the jurisdiction to try a suit claiming compensation by the plaintiffs for injuries or damages suffered by them by a party whose action had inflicted the injury. In the year 1956, the Motor Vehicle Accidents Claims Tribunals were established to deal with such claims purported to be for providing speedy trial. However, proof of negligence was a condition precedent for grant of compensation under the 1939 Act. The 85th Law Commission in its report submitted in May, 1980, proposed two new measures, i.e. (i) introduction of Section 92-A in the Motor Vehicles Act, 1939 by which the doctrine of liability without fault was to be introduced and, (ii) the imposition of strict liability as regard death or bodily injury caused by the accident or nature specified in Section 110(1) thereof. Recommendations were also made by the Law Commission to the effect that claim on fault basis should be barred but the same had not been accepted by the Parliament. While making the aforementioned recommendations, the Commission referred to the following observations made by this Court in Bishan Devi and others Vs. Sirbaksh Singh and Anr. [(1980) 1 SCC 273]: "the law as it stands requires that the claimant should prove that the driver of the vehicle was guilty of rash and negligent driving." By reason of Section 92-A, 92-B in Motor Vehicles Act, 1939 inserted in the year 1982, a sum of Rs. 15,000/- was to be provided in case of death and a sum of Rs. 75,000/- in respect of permanent disablement by introducing the concept of "no-fault liability". The amount of compensation, however, had been revised from time to time. The Law Commission furthermore recommended for laying of a scheme in terms whereof the victims of 'hit and run accident' could claim compensation where the identity of the vehicle involved in the accident was unknown. Yet again, the 199th Law Commission in its report submitted in 1987 stated the law as it stood then in the following terms: "the law as it stands present, save the provisions in chapter VIIA inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay the compensation and which fault caused the harm." The present Act came into force thereafter in terms whereof inter alia Sections 92-A to 92-E of the 1939 Act were replaced by Sections 140 to 144 whereby and whereunder the amount of compensation in case of death was raised to Rs. 50,000/- and for permanent disablement to Rs.25,000/-. However, having regard to number of representations received from various quarters, a review committee was constituted by the Government of India in the year 1990 to examine the same and review such provisions of the said Act, as may be found necessary. In terms of the recommendations of the Review Committee as also the Transport Development Council, the Act was thereafter amended in the year 1994 in terms whereof a new pre-determined formula in the form of Section 163-A for payment of compensation to road accident victims on the basis of age and income on a no-fault basis was provided. STATUTORY PROVISIONS: Chapter X of the said Act provides for liability

without fault in certain cases. Section 140 provides for liability upon the owner of the vehicle to pay compensation on the principle of no fault. The said provision reads thus: "140. Liability to pay compensation in certain cases on the principle of no fault. - (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees. (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. (4) A claim for compensation under sub- section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. (5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force : Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A." Sections 141 and 142 of the said Act read as under: "141. Provisions as to other right to claim compensation for death or permanent disablement. - (1) The right to claim compensation under Section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in Section 163-A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. (2) A claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place. (3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under Section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and - (a) if the amount of the first-mentioned compensation is less than the amount

of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation; (b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation. 142. Permanent disablement. -For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or (b) destruction or permanent impairing of the powers of any member or joint; or (c) permanent disfiguration of the head or face." Section 144 provides for a non-obstante clause. Section 163-A was inserted by Act 54 of 1994 which came into force from 14.11.1994. The said provision has been inserted to provide for a new pre-determined structured formula for payment of compensation to road accident victims on the basis of age/ income of the deceased or the person suffering permanent disablement. Sections 163-A and 163-B read thus: "163-A. Special provisions as to payment of compensation on structured- formula basis. - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation. - For the purposes of this sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923). (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule. 163-B. Option to file claim in certain cases. - Where a person is entitled to claim compensation under Section 140 and Section 163-A, he shall file the claim under either of the said sections and not under both." The second schedule referred to in Section 140 of the Act provides for a structured formula for the purpose of grant of compensation to a third party involved in fatal accident/injury. By reason thereof a multiplier system is introduced pursuant whereto and in furtherance whereof the amount of compensation is required to be calculated having regard to the age of the victim and his annual income. However, in terms of the note appended to the said Schedule the amount of compensation so arrived at in the case of fatal accident, the claims is to be reduced by one-third, in consideration of the expenses which the victim would have incurred towards maintaining himself, had he been alive. Clause (2) of the said Second Schedule provides that the amount of compensation shall not be less than Rs. 50,000/-. It also provides for grant

of compensation under several heads, namely, (3) General Damages in case of death, (4). General Damages in case of injuries and disabilities, (5). Disability in non-fatal accidents and (6) notional income for compensation to those who had no income prior to accident. However, the maximum amount which is to be paid under the different heads had also been specified. Chapter XII deals with constitution of claims tribunals, application for compensation, option regarding claims for compensation in certain cases, award of the claims tribunal etc. Sections 166, 167 and 168 read thus: "166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made- (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 authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant. (3) *** (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act. 167. Option regarding claims for compensation in certain cases. - Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. 168. Award of the Claims Tribunal. -On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: Provided that where such application makes a claim for compensation under section 140 in respect of the

death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X. (2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award. (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct." Section 176 provides for the rule making power. The State of Gujarat in exercise of the said power made rules known as Gujarat Motor Vehicle Rules. Rule 211 provides for the procedure regarding compensation arising out of accident. Sub-rule (1) of the said rule reads thus: "(1) An application for compensation under sub-section (1) of section 166 shall be made to the Claims Tribunal in Form Comp. A, and shall contain the particulars specified in that form." The rules framed by the State of Gujarat also provide for the forms in terms whereof the applications for claim are required to be filed. Form Comp. A is the format for filing application for compensation arising out of the use of motor vehicles. The following columns inter alia are required to be filled up: "10. Brief particulars of the accident... ... ... 11. Quantum of compensation claimed and basis thereof ... ..." However, Rule 231 provides for procedure regarding compensation on the principle of no-fault which is in the following terms: "231. Procedure regarding compensation on the principal of no fault:- Notwithstanding anything contained in rules 211 to 230 and 232 in the case of a claim for compensation under Chapter X of the Act, the procedure shall be as follows, namely:- (1) An application for compensation shall be made to the Claims Tribunal in Form CWF, in triplicate, and shall contain the particulars specified in that form. (2) The application shall be accompanied by a fee of ten rupees in the form of Court fee stamps, and the following documents, namely: (i) First Information Report; (ii) Injury certificate or Post- mortem report in case of death; (iii) Heirship certificate in case of death; (iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident; (v) Particulars of insurance of the vehicle involved in the accident. (3) No fees shall be charged for process of application for compensation made under this rule. (4) The Claims Tribunal shall dispose of the application for compensation within six weeks from the date of receipt of such application. (5) For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973. (6) The Claims Tribunal shall not reject any application made under this rule on the ground of any technical defect, but shall give notice to the applicant and get the defect rectified. (7) For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall obtain whatever information and document considered necessary by it from the police, medical and other authorities. (8) On receipt of the application for compensation, the Claims Tribunal shall give notice to the owner, and the insurer, if any, of the vehicle involved in the accident, directing them to appear on a date not later

than ten days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the application for compensation. The Claims Tribunal shall state in such notice that, in case they fail to appear on such appointed date, the Tribunal shall proceed exparte on the presumption that they have no contention to make against the award of compensation. (9) The Claims Tribunal shall proceed with the application for compensation, on the basis of - (i) First Information Report; (ii) Injury certificate or Post- mortem report in case of death; (iii) Registration certificate of the motor vehicle involved in the accident; (iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks; (v) The nature of the treatment given by the medical officer who has treated the victim. (10) The Claims Tribunal, in passing the orders, shall make an award of compensation of twenty five thousand rupees in respect of the death, and of twelve thousand rupees in respect of the permanent disablement, to be paid by the owner or insurer, of the vehicle involved in the accident. (11) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them. (12) The Claims Tribunal, in passing the orders, shall also direct the owner or insurer, of the vehicle involved in the accident, to pay the amount of compensation to the claimant within thirty days from the date of the said orders. (13) Where the Claims Tribunal thinks that the actual payment to the claimant is likely to take time because of the identification and the fixation of the legal heirs of the deceased, the Claims Tribunal may call for the amount of compensation awarded, to be deposited with the Tribunal and then proceed with the identification of the legal heirs for deciding the payment of compensation to each of the legal heirs." In terms of the aforementioned rule, an application for compensation in respect of liability without fault is required to be filed without any particular as regard the accident having regard to the fact that by reason thereof, fault on the part of the driver of the motor vehicle is required to be pleaded or proved. ANALYSIS OF THE RELEVANT PROVISIONS: The relevant provisions of the Act are beneficial in nature. The Act indisputably is in the nature of a social welfare legislation. The provisions as regard no fault liability evidently were inserted having regard to the fact that the road accidents in India had touched a new height and at least in some of the cases it was found that rash or negligent driving causing death or injury to the innocent persons could not be proved. Whereas in terms of Section 140 of the Act a statutory liability has been cast upon the owner in case of death or permanent disablement; both under Section 163-A as also Section 166 of the Act, the insurer had been made responsible. It is true that in terms of Section 163-B of the Act an option had been provided for so as to enable a person to lay a claim for compensation either under Section 140 or Section 163-A and not under both but having regard to the scheme of the Act, the same was not necessary. Section 163-A was introduced in the Act by way of a social security scheme. It is a code by itself. It appears from the Objects and Reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act several representations and suggestions were made from the State Governments, transport operators and members of public

in relation to certain provisions thereof. Taking note of the observations made by the various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations: "The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof-of-fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.3.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. The General Insurance Company with whom the matter was taken up, is agreeable in principle to a scheme of structured compensation for settlement of claims on"fault liability" in respect of third party liability under Chapter XI of M.V. Act, 1988. They have suggested that the claimants should first file their Claims with Motor Accident Claims Tribunals and then the insurers may be allowed six months time to confirm their prima facie liability subject to the defences available under Motor Vehicles Act, 1988. After such confirmations of prima facie liability by the insurers the claimants should be required to exercise their option for conciliation under structured compensation formula within a stipulated time." The recommendations of the Review Committee and representations from public were placed before the Transport Development Council for seeking their views pursuant whereto several sections were amended. Section 163-A was inserted in the Act to provide for payment of compensation in motor accident cases in accordance with the Second Schedule providing for the structured formula which may be amended by the Central Government from time to time. Section 140 of the Act dealt with interim compensation but by inserting Section 163-A, the Parliament intended to provide for making of an award consisting of a pre- determined sum without insisting on a long-drawn trial or without proof of negligence in causing the accident. The Amendment was, thus, a deviation from the common law liability under the Law of Torts and was also in derogation of the provisions of the Fatal Accidents Act. The Act and the Rules framed by the State in no uncertain terms suggest that a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specified category. The heirs of the deceased or the victim in terms of the said provisions were assured of a speedy and effective remedy which was not available to the claimants under

Section 166 of the Act. Chapter XI was, thus, enacted for grant of immediate relief to a section of people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto; compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in column Nos. 2 to 6 thereof leaves no manner of doubt that the Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle. The submission of learned counsel appearing on behalf of the appellants to the effect that Sections 140 and 163-A provide for similar scheme cannot be accepted for more than one reason. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made thereunder, as has been noticed hereinbefore, is in addition to any other claim which may be made under any other law for the time being in force. Section 163-A of the Act does not contain any such provision. Section 163-A of the Act is interlinked with several sections of Chapters XI and XII thereof. Section 140 imposes a liability upon the owner of the vehicle to pay compensation where death or permanent disablement of any person has resulted from accident arising out of the use of a motor vehicle. By reason of the said provision a fixed sum is to be paid. Sub-Section (4) of Section 140 provides that the claim for compensation under sub-section (1) thereof shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Sub-section (5) of Section 140 of the Act categorically provides that the obligation of the owner of the vehicle shall not be in derogation of any statutory law cast upon the owner of the vehicle to pay compensation under any other law for the time being in force subject, however, to the condition as has been laid down in the proviso appended thereto that the amount of such compensation to be given under any other law should be reduced from the amount of compensation payable thereunder or Section 163-A. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-Section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay in the

case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-Section (2) of Section 163-A is in pari materia with Sub-Section (3) of Section 140 of the Act. Section 163-A does not contain any provision identical to Sub-Section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said Section or Section 163-A. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act. Decisions rendered by this Court are galore where computation as regard the amount of compensation has been related to multiplier method involving ascertainment of loss of dependency and capitalizing the same by appropriate multiplier. (See General Manager, Kerala State Road Transport Corporation, Trivandurm Vs. Mrs. Susamma Thomas and others, (1994) 2 SCC 176). The structured formula provided for in the Second Schedule also provides for similar concept as regard determination of the amount of compensation. Apart from the fact that compensation is to be paid by applying multiplier method under the Second Schedule other relevant factors, namely, reduction of one-third in consideration of the expenses which the victim would have incurred towards maintaining himself, general damages in case of death as also in the case of injuries and disabilities as also the disability in non-fatal accidents, a notional income for compensation to those who had no income prior to accident are provided for, are required to be considered which is also a clear pointer to the fact that thereby the Parliament intended to provide for a final amount of compensation and not an interim one. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of society. It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted 'ex-abundanti cautela' so as to remove any misconception in the mind of the parties to the lis having regard to the fact that

both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, [AIR 1985 SC 278 : (1985) 1 SCC 218]. The decision of this Court in Kunal Singh Vs. Union of India and Another [(2003) 4 SCC 524] relied upon by Mr. Banerjee cannot be said to have any application whatsoever in the instant case as therein this Court while considering the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 held that the language thereof is plain and certain statutory obligation on the employer was cast to protect an employee acquiring disability during service and only in that situation, it was observed: "9... In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act..." It is also not a case where an exception or exclusion clause in a beneficial legislation has been provided for and, therefore, the decision of this Court in State of Tripura and Another Vs. Roopchand Das and Others [(2003) 1 SCC 421] cannot also be said to have any application. It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], Indian Handicrafts Emporium and Others vs. Union of India and Others [(2003) 7 SCC 589], Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. [JT 2003 (9) SC 109 = 2003 (9) SCALE 713 and Ashok Leyland Vs. State of Tamil Nadu and Anr. [2004 (1) SCALE 224]. The object underlying the statute is required to be given effect to by applying the principles of purposive construction. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both. In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act. The question may

be considered from different angles. As for example, if in the proceedings under Section 166 of the Act, after obtaining compensation under Section 163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefor as a consequence whereto the Tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Furthermore, if in a case the Tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under Section 166 of the Act, would it be at liberty to award compensation in terms of Section 163-A thereof. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under Section 163-A of the Act is interim in nature. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and separate in nature. It is also not of much relevance that in terms of Section 140 of the Act, the owner of the vehicle has been fastened with the statutory liability and in Section 163-A thereof both the owner as also his authorised insurer has been made so liable. In Sub-Section (5) of Section 140 of the Act the expression "also" has been used which is indicative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. Proviso appended to Sub-Section (5) of Section 140 states that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of the compensation payable under Sub-Section (2) thereof or under Section 163-A of the Act. Right to claim compensation under Section 140, having regard to the provisions contained in Section 141 is in addition to any other right to claim compensation on the principle of fault liability. Such a provision does not exist in Section 163-A. If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the Scheme. Section 163-A, on the other hand, nowhere provides that the payment of compensation of no-fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability. It is also not correct to contend that the expression "any other law for the time being in force" used in Section 140(5) would include any other provisions of the Motor Vehicles Act. Had the intention of the Parliament been to include the other provisions of Motor Vehicles Act within the

meaning of the expression "any other law for the time being in force", it could have said so expressly. The very fact that the Parliament has chosen to use the expression "any other law", the same, in our considered opinion, would mean a law other than the provisions of the Motor Vehicles Act. The proviso appended to Sub-Section (5) of Section 140 of the Act is required to be given a purposive meaning. It is not in dispute that the claim of compensation irrespective of the death or bodily injury may arise under other statutes as, for example, Workmen's Compensation Act, Factories Act, Fatal Accidents Act and other acts governing various industries including hazardous industries. In the event, the motor vehicle in question is insured, ultimately the liability would also be fastened upon the insurer having regard to the provision laid down in Chapter XII of the Act. We may also notice that Rule 211(1) of Gujarat Motor Vehicle Rules provides for the application for compensation in terms of Sub-Section (1) of Section 166 of the Act. A claim application is to be filed in Form Comp. A. Rule 231 thereof provides for an application for compensation in respect of liability without fault and for the said purpose the claim application prescribed therefor is to be filed in Form No. CWF. The very fact that different forms had been prescribed as regard determination of the final compensation is also suggestive of the fact that both proceedings are meant to be final in nature. Column No. 10 in Form Comp. A requires the claimant to give brief particulars of the accident which would include the nature and extent of fault on the part of the driver of the vehicle, but no such column is provided for in Form CWF. Subject to the said distinction, all other particulars required to be furnished are almost identical. We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non- obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section 163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of. Conclusion : We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act. However, in this case, we may notice that the parties have proceeded to file two applications - one, under Section 163-A and another under

Section 166 of the Act. Both have been entertained. Both the Tribunal as also the High Court have proceeded on the basis that the amount of compensation under Section 163-A is by way of an interim award and the same would not preclude the claimants to proceed with his claim made in terms of Section 166 of the Act. It is submitted at the Bar that the appellants have withdrawn 50% of the amount and rest of the amount has been invested. The appellants have lost both of their parents in the accident. Only one of the appellants at the relevant time was a major. It appears that 70% of the amount permitted to be withdrawn has been deposited in the Fixed Deposit. We agree with the submission of Mr. Banerjee that the claim of the appellants made under Section 163-A be treated to be one under Section 140 of the Act and upon adjusting the amounts provided for thereunder, the appellants may refund the rest thereof to the insurer. Keeping in view of the limited questions posed before us, in our opinion, it is not necessary to go into the purported discrepancies existing in the Second Schedule of the Act. We, for the reasons aforementioned, do not find any merit in the review applications which are dismissed. So far as Civil Appeal Nos. 3126/2002 and 3127/2002 are concerned, we in exercise of our jurisdiction under Article 142 of the Constitution direct that the claim applications of the appellants under Section 163-A of the Act be treated to be applications under Section 140 thereof. The amount invested by the Tribunal may be allowed to be withdrawn by the respondent - Insurance Company. The appellants shall refund the excess amount withdrawn by them after adjusting the amount payable in terms of Section 140 of the Act and the interest which would have accrued thereon shall be adjusted towards the compensation received by the claimant within four weeks from the date of communication of this order whereafter, the Motor Vehicles Accident Claims Tribunal shall proceed to determine their claim petitions filed under Section 166 of the Act in accordance with law. This order shall not be treated as a precedent. Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest; it is desirable that the Central Government bestows serious consideration to this aspect of the matter. Subject to the aforementioned directions, the appeals and the review petitions are dismissed. No Costs.