Karnataka High Court Guruanna Vedi And Anr. vs General Manager, Karnataka State ... on 10 April, 2001 Equivalent citations: III (2002) ACC 350 Author: A Bhan Bench: A Bhan, T Vallinayagam, A S Reddy JUDGMENT Ashok Bhan, J. 1. Keeping in mind the importance of various questions arising regarding the scope and applicability of Section 163A which was inserted by the Parliament in the Motor Vehicles Act, 1988 (for short, 'the 1988 Act') by Motor Vehicles (Amendment) Act, 1994 (Act No. 54/1994) (hereinafter referred to as 'the Amending Act') the Division Bench on 3rd of March, 2000 after formulating certain questions of law which were likely to arise and affect a large number of appeals or proceedings pending before this Court requested Hon'ble the Chief Justice to constitute a Larger Bench to lay down law for its uniform applicability in the State of Karnataka and to avoid difference of opinion amongst various Benches. Facts: On 28.3.1987, one Pradeep Wadi and his younger brother Praveen Kumar Wadi were proceeding on Hero Honda motor cycle bearing registration No. CAX 9954. Praveen Kumar Wadi was driving the motor cycle and Pradeep Wadi was the pillion rider. They were proceeding from Bangalore to Tiptur. At about 8 p.m. when the motor cycle reached Manchakalkuppe, which is at a distance of 5 miles from Tumkur, a KSRTC bus bearing registration No. MIE 9749 was found stationed on the left side of the National Highway No. 4. Another KSRTC bus bearing registration No MEF 2128 came from the opposite direction. Praveen Kumar Wadi stopped the motor cycle and halted it just behind the bus MIE 9749 with a view to allow the bus MEF 2128 to proceed. In the meantime, another bus plying from Bangalore to Shimoga belonging to KSRTC bearing registration No. MEF 867 attempted to overtake the shuttle bus and it dashed against Hospet-Bangalore bus and then struck the motor cycle and the shuttle bus, resulting in the accident. Praveen Kumar Wadi died at the spot and his brother Pradeep Wadi suffered injuries and became unconscious. 3. Pradeep Wadi filed a claim petition under the Motor Vehicles Act, 1939 (for short, 'the 1939 Act') claiming compensation for the injuries suffered. Father aged 60 and mother aged 50 filed Claim Petition 227/1987 claiming compensation for the death of Praveen Kumar Wadi. It was stated in the claim petition that the deceased was aged about 25 years at the time of the accident and he was working as a Sales Representative in Madura Coats Limited. He was unmarried. He was drawing a monthly salary of Rs. 1,660/- plus Rs. 710/- plus Rs. 25/-. Had he remained alive and continued in service, he would have retired as a Regional Manager. After taking into consideration the promotional aspects of the deceased, the claim was put at a total compensation of Rs. 15,10,000/-. 4. The Tribunal determined the monthly income of the deceased at Rs. 1,237/- as on March, 1987 after deducting Rs. 500/- towards personal expenses of the deceased, the balance amount of Rs. 737/- was rounded off to Rs. 740/-was taken as monthly loss of dependency. The annual dependency was taken at Rs. 8,880/-. Keeping in view the age of the parents, the multiplier of 9 was adopted. The total loss under the head of loss of dependency was worked out to Rs. 79,920/-. To this amount, a sum of Rs. 10,000/- added towards expectation of life. A total compensation of Rs. 90,000/- was awarded. Aggrieved against the order of the Tribunal, the

appeal was filed. 5. Counsel for the appellant had argued that the 1939 Act has been repealed and in its place Motor Vehicles Act, 1988 was enacted by the Parliament, which came into force with effect from 1.7.1989. That as per the repeal and saving Section 217 of 1988 Act, the proceedings initiated under the 1939 Act have to be continued under 1988 Act. For this he has relied upon the judgment of the Supreme Court in Gajraj Singh v. State Transport Appellate Tribunal . That in 1988 Act, Section 163-Ahas been introduced with effect from 14.11.1994 providing a structural formula for grant of compensation in the nature of no fault liability. He prayed that the appellants be granted compensation as per the special provisions under Section 163-Aof 1988 Act. He has placed reliance upon the Division Bench judgment of the Guiarat High Court in Ramdevsing v. Chudasma and Ors. and Hansraj Bhai v. Kodala and Anr. . As the questions raised by the Counsel for the parties were arising in number of cases and were required to be determined for future reference as well, the Division Bench referred the questions to a Larger Bench after formulating certain questions of law. The questions were re-framed at the time of arguments before the Full Bench. The re-framed questions are: (1) Whether Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') confers substantial or procedural rights to the claimants? (2) Whether the claim under Section 163-A of the Act is to be treated as interim or final? A fortiori as to whether a claimant after receiving compensation under Section 163-A can later on make a claim under Section 166 of the Act as well? (3) Whether Section 163-A of the Act would be applicable to the claims made in respect of the accidents which took place prior to its introduction i.e., 14.11.1994? Corollary to this question would be as to whether the provisions of Section 163-A of the Act could be made applicable to the accidents which took place before coming into force of the M.V. Act, 1988 and had occurred when M.V. Act 1939 was in operation? (4) Whether a claim under Section 163-A of the Act is tenable where the income of the victim was/is more than Rs. 40,000/- per annum and where the actual medical expenses incurred is Rs. 15,000/-? (5) As to whether in a claim petition filed under Section 163-A by persons other than wife and children, the Motor Accident Claims Tribunal can apply a multiplier lower than the one permitted in II Schedule on the basis of the age of the claimant/s? (6) As to whether a claimant, during the pendency of the proceedings at the original or the appellate stage, can amend his claim petition under Section 166 as petition under Section 163-A of the Act? To appreciate the questions raised, it is necessary to know history as to how Section 163-A came to be incorporated by the Parliament in the 1988 Act. Initially claims based on tort were filed under common law in Civil Courts. Road accidents have become one of top killers in the country, specially when the truck and bus drivers operate recklessly. This persuaded the Legislature to provide Special Forum for the same and that is how, it appears that Sections 110 to 110F were introduced in the 1939 Act. Prior to addition of these sections in the Motor Vehicles Act there existed Section 110 but under the said provision power to appoint persons to investigate and report about motor accidents was with the State Government, but the officers so appointed were not empowered to adjudicate on the liability of the insurer or on the amount of damages to

be awarded except at the express desire of the Insurance Company concerned. Said provision did not help persons with limited means in prefering claims on account of injury or death because a Court decree has to be obtained before the obligation of the Insurance Company to meet the claims can be enforced. It was, therefore, proposed to empower State Government to appoint Motor Accident Claims Tribunal to determine and award damages and that is how Sections 110 to 110F came to be inserted in the Act. Prior to this addition, compensation in respect of accidents involving the death of or bodily injury to persons arising out of use of motor vehicle was justifiable in Civil Courts. That remedy because of the heavy Court-fees was expensive as well as time-consuming. With the rise in the road accidents and the resultant claim petitions, to simplify the procedure to get speedy relief to the claimants a procedure was evolved in the Motor Vehicles Act so that a claim for compensation can be made by a simple application to the Tribunal without payment of ad valorem Court-fees. The claims were based on strict liability meaning thereby that the claimants had to prove that the tortfeasor was negligent in causing the accident. For the first time in Kesavan Nair v. State Insurance officer 1971ACJ 219 (Kerala) Justice Krishna Iyer, as he then was, observed in paragraph 4 of his order as follows: It is not altogether irrelevant to observe that motor vehicle accidents in the State are increasing at an alarming rate but that there is hardly any serious check by the concerned authorities to ensure careful driving. The innocent victim is faced with legal difficulties in recovering damages. On account of the legal position laid down in Mangilal v. Parasram 1970 ACJ 86 (MP), the insurer is liable to pay only if the insured is liable to pay. It often times happen that a prosecution precedes a civil case and since the prosecution is in the control and direction of the police, if it ends in an acquittal on account of the indifference in the conduct of the prosecution, the insured pleads non-liability and the insurer also some times escape. Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer, instead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the Legislature and not for the Court. But this is a lacuna in the law which I think it would be just to rectify. This was the first judgment which appears to have put on alert the Government machinery to think in the direction of introducing a provision for no fault liability. 6. The Division Bench of, Bombay High Court in Marine and General Insurance Co. Ltd. v. Dr. Balkrishna Ramchandra Nayan 1976 ACJ 288, observed in paras 51, 52, 54 and 57. (51) The moment a motor vehicle is vised and injury is caused, a liability to pay compensation arises, and the Tribunal can adjudicate upon that liability and determine 'just' compensation. This can be on the general basis of ubi jus ibi rededium in respect of which we find the following comment in Brooms. The principle adopted by Courts of Law accordingly is that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common law will judge according to the law of nature and the public good.'52.

In my opinion, the public good requires that every one injured, viz., by the use of a motor vehicle, must immediately get compensation for the injury. Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or efficient functioning of the motor vehicles. Every person has a right to claim compensation as that is the only way of remedying the injury caused to him in a modern urbanised industrialised and automobile ridden life. 54. Moreover, a look at the latest standard books on the law of torts also reveals that when and even if importing the notion of torts in determining' the just compensation, it is not necessary for the Tribunal to award damages only if the plaintiff proves negligence or any other tort recognised by well-known books as species of torts. 57. The time has now come when instead of involving the Insurance Company which is now, so far as this country is concerned, in the public sector, and the citizens injured in automobile accidents, in costly and lengthy litigation, what is needed is a sure position in law. There is generally prolonged litigation in such cases. In the absence of any words used by the Legislature to underpin the liability with respect to negligence or any other specific tort or tort generally that liability must be held to be in respect of injuries done or caused as a result of the use of motor vehicle unless there is some reason recognised by law for exempting the user from that liability. 7. The Andhra Pradesh High Court in the case of Haji Zakaria v. Naoshir Catna 1976 ACJ 320 (AP), it was held: We will now refer to a few other decisions which throw light on the problem. In British India General Insurance Co. Ltd. v. Capt. Itbar Singh 1958-65 ACJ 1 (SC), the question of interpretation and the scope of Section 96 arose. Sarkar, J., speaking for the Court, made it very plain that the Court cannot add words to a section unless as it stands it is meaningless or of doubtful meaning. Applying this rule of interpretation, we will find Section 95(l)(b) is neither meaningless nor has any doubt or ambiguity about it. Such being the case, the Court cannot add the words 'in the event of rash and negligent driving' in Section 95(1)(b). The Court further held that the insurer has been conferred a right under Section 96(2) to be made a party to the suit and to defend it. Since that right is a creature of the statute, its contents and scope necessarily depend on the provisions of statute. Sub-section (2) clearly provides that an insurer is not entitled to take any defence which is not specified in it and cannot be added to. The only manner of avoiding liability provided in Subsection (2) is through the defences therein mentioned. In the instant case, the respondent No. 1 admits that the heirs of the deceased should be compensated and it is not open to the insurer that, since there is no rash and negligent driving, the liability to compensate does not arise, since it is not one of the defences available to it under Section 92(2) The Supreme Court considered the object of Chapter VII of the Motor Vehicles Act and the scope of Section 95(1 )(b) and Section 96(1) in Neiv Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani 1958-65 ACJ 559 (SC), Raghubar Dayal, J., who spoke for the Court, explained the object of Chapter VIII thus: Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that the third parties who suffer on account of the user of the motor vehicles would be able to

get damages for injuries suffered and that their liability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment.'The learned Judge proceeds further to state: 'The policy must, therefore, provide insurance against any liability to third party incurred by that person when using that vehicle. The policy should, therefore, be with respect to that particular vehicle. It may, however, mention the person specifically or generally by specifying the class to which that person may belong, as it may not be possible to name specifically all the persons who may have to use the vehicle with the permission of the person owning the vehicle and effecting the policy of insurance. The policy of insurance contemplated by Section 94, therefore, must be a policy by which a particular car is insured.' It was also laid down that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under it by virtue of the provisions of the Act is not affected by any condition in the policy. This clarification of the object of Chapter VIII and the liability of the insurer lends considerable support to the view we have expressed. We, consequently, hold that the liability of the insurer and consequently that of the insured does not cease to exist in the absence of proof of rash and negligent driving of the insured car. We reject the contention of the Insurance Company in this behalf. We should not, however, be understood as expressing any opinion on the question whether that liability to compensate would arise and exist in the event of the injured person being responsible for the accident or having contributed to it. We do not propose to decide that question as it does not arise here. There is no proof and no finding that the deceased was responsible for the accident or that he had contributed to it. 8. The Supreme Court in the case of Manjushri Radha v. B.L. Gupta 1977 ACJ 134, has observed: (1) With the emergence of an ultra modern age which had led to stride of progress in all spheres of life, we have switched over from the fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some, it has also proved to be misfortune. Such are the cases of the victims of motor accidents resulting from rash and negligent driving which take away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for though the percentage of deaths caused by motor accidents in other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our law-makers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimise the motor accidents and to provide for adequate compensation to the families who face serious socio-economic problems if the main bread-earner loses his life in motor accident. The time is ripe for serious consideration of creating no fault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalization of general insurance companies and the expanding trend towards nationalization of bus transport, the law of torts based on no fault, needs

reform. While Section 110 of the Motor Vehicles Act provides for the constitution of Claims Tribunals for determining the compensation payable, Section 110-A provides for the procedure and circumstances under which the family of a victim of a motor accident can get compensation and lays down the various norms, though not as exhaustively as it should have. The Courts, however, have spelt out and enunciated valuable principles from time-to-time which guide the determination of compensation in a particular situation. Unfortunately, however, Section 95(2)(d) of the Motor Vehicles Act limits the compensation to be paid by an Insurance Company to Rs. 2,000/- only in respect of death to any third party and this is one disconcerting aspect on which we shall have to say something in a later part of our judgment. (10) While our Legislature has laws made to cover every possible situation, yet it is well-nigh impossible to make provisions for all kinds of situations. Nevertheless, where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law-makers to meet this social need by providing for heavy and adequate compensation particularly through Insurance Companies. It is true that while our lawmakers are the best Judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their attention. Our country can ill-afford loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set-back to the industry or occupation concerned. Apart from that, death of a worker creates a serious economic problem for the family which be leaves behind. In these circumstances, it is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/- or like large sums, yet when death comes to him not through a plane but through a motor vehicle, he is entitled to only Rs. 2,000/-. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the insurance companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestion will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish. 9. Again the Supreme Court in the case of State of Haryana v. Darshana Devi 1979 ACJ 205 speaking through Justice Krishna

Iyer observed in paragraphs 5 and 6 of the judgment: (5) Two principles are involved. Access to Court is an aspect of social justice and the State has no rational litigation policy if it forgets this fundamental. Our perspective is best projected by Cappelletti, quoted by the Australian Law Reform Commission: 'The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic human right of a system which purports to guarantee legal right.' We should expand the jurisprudence of access to justice as an integral part of social justice and examine the constitutionalism of Court-fee levy as a facet of human rights highlighted in our nation's Constitution. If the State itself should travers this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved a second look at its policy is overdue. The Court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as Court-fee, is fully reviewed by this Court. Before parting with this point, we must express our poignant feeling that no State, it seems, has as yet, framed rules to give effect to the benignant provision of legal aid to the poor in Order 33 Rule 9-A, Civil Procedure Code, although several years have passed since the enactment. Parliament is stultified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the State does not bring into force by wilful default in fulfilling the condition sine qua non. It is public duty of each great branch of Government to obey the rule of law and uphold the tryst with the Constitution by making rules to effectuate legislation meant to help the poor. (6) The second principle the State of Haryana has unhappily failed to remember is its duty under Article 41 of the Constitution to render public assistance, without litigation, in cases of disablement and undeserved want. It is a notorious fact that our highways are graveyards on a tragic scale, what with the narrow, neglected roads, reckless, unchecked drivers, heavy vehicular traffic and State Transport buses often inflicting the maximum casualties. Now that insurance against third party risk is compulsory and motor insurance is nationalized and transport itself is largely by the State Undertakings, the principle of no fault liability and on-the-spot settlement of claims should become national policy. The victims, as here, are mostly below the poverty line and litigation is compounded misery. Hit-and-run cases are common and the time is ripe for the Court to examine whether no fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubts. A long ago Report of the Central Law Commission confined to hit-and-run cases of auto accidents is gathering dust. The horrendous increase of highway casualties and the chronic neglect of rules of road safety constrains us to recommend to the Central Law Commission and to Parliament to sensitise this tragic area of Tort law and overhaul it humanistically. 10. Again, the Supreme Court in the case of N.K.V. Bros. (P) Ltd. v. M. Kanimai Ammal 1980 ACJ 435 (SC), has

pointed out that the road accidents had become of the top killers in the country. It was pointed out that most of these accidents would be due to reckless driving which persuaded the Courts to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Supreme Court cautioned the Accident Claims Tribunal to take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. The Supreme Court expressed: Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by Tribunals. We must remember that; Judicial Tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint a sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard. 11. Supreme Court in Concord of India Insurance Co. Ltd. v. Nirmala Devi I (1980) SC] 55, reiterated its earlier views. In the case of Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi 1981 ACJ 507, the Supreme Court again emphasised the need to provide by law for payment of reasonable amounts of compensation without contest to victims of road accidents. Paragraph 26 of the said judgment is reproduced below: (26) We cannot part with this case without impressing upon the Government, once again, the urgent need to provide by-law for the payment of reasonable amounts of compensation, without contest, to victims of road accidents. We find that road accidents involving passengers travelling by rail or public buses are usually followed by an official announcement of payment of ex gratia sums of victims, varying between five hundred and two thousand rupees or so. That is a niggardly recognition of the State's obligation to its people, particularly so when the frequency of accidents involving the public transport system has increased beyond believable limits. The newspaper reports of August and September, 1981, regarding deaths and injuries caused in such accidents have a sorry story to tell. But we need not reproduce figures depending upon the newspaper assessment because, the newspapers of 18th September, 1981, carry out the report of a statement made by the Union Minister of State for Shipping and Transport before the North Zone goods transport operators that 20,000 persons were killed and 1.5 lakh were injured in highway accidents during 1980. We wonder whether adequate compensation was paid to this large mass of suffering humanity. In any event, the need to provide by law for the payment of adequate compensation without contest to such victims can no longer be denied or disputed. It was four years ago that this Court sounded a warning and a reminder in Manjushri Raha v. B.L. Gupta 1977 ACT 134 (SC): 'With the emergence of an ultra-modern age which had led to stride of progress in all spheres of life, we have switched over from fast to faster vehicular traffic which has come as a boon to many, though

sometimes in the case of some it has also proved to be a misfortune. The time is ripe for serious consideration of creating no fault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of 'motor vehicles, the nationalization of bus transport, the law of torts based on no fault needs reform.' '... it is only just and fair that Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/-" or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2,00C/-. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet Section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in Section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the Insurance Companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish'. 12. The cumulative effect of all these judgments was that after 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 to go into the problems faced by claimants, Surface Ministry and the like. Review Committee came out with a report suggesting comprehensive changes in the existing Act. The Review Committee in its report at page 122, Annexure VI, recommended to the Parliament to pass legislation to give compensation on no fault liability to different classes of cases depending upon the age of the deceased, monthly income at the time of his death, the earning potential in the case of the minor, loss of income on account of loss of limb, etc. The affected party then would have the option of either accepting the lumpsum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. The recommendation of the Review Committee in this regard reads: 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 Accident 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 the compensation that is payable for different classes 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 lumpsum compensation as is notified in that scheme of structured compensation or of pursuing his claim through the normal channels. The General Insurance Corporation 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. 14. Based on the recommendation of the Review Committee, Union of India brought about a comprehensive scheme to amend the Motor Vehicles Act, 1988 to remedy the situation. The bill for amendment of 1988 Act, aided and assisted by the Review Committee was placed for consideration of the Parliament. The statements of objects and reasons supporting the amendment Act 54/1994 are set out in the Act. The changes brought about are diverse. Section 163-A was introduced as a new provision more or less on the same pattern of Section 140. While Section 140 deals with interim compensation, Section 163-A proposed to award a predetermined sum without insisting on a long drawn trial or without proof of negligence in causing the accident. In other words, an absolute liability came to be introduced in derogation of the provisions of Fatal Accidents Act. The proposed amendment was also a deviation from the common law liability under the Law of Torts. This was an innovative step. 15. Introduction of Section 163-A is not an independent means to award compensation. It is linked with several other provisions in Chapters XI and XII of Motor Vehicles Act. Enforcement of Section 163-A is dependent on the other provisions of the Act. Hence, the need to analyse ancillary provisions of the Act, as well. 16. Proviso to Section 140(5) of the Act is to the effect that the amount paid as compensation under any other law is to be reduced from payment under Section 140 or under Section 163-A. Section 149 mandates that the liability of an insurer includes the liability to pay compensation under Section 163-A. Section 163-B gives the option to the claimant to claim either under Section 140 or under Section 163-A but not under both. Explanation appended to Section 145 states that, for removal of doubts, the claim for compensation includes the claim under Section 140 as well as under Section 163-A. An award under Section 140 or under Section 163-A is not made appealable by any express provision in Section 173. 17. Section 163-A was introduced as a new provision. While Section 140 deals with liability to pay compensation in

certain cases on the principle of no fault, Section 163-A was introduced as a new provision proposing to award a pre-determined sum without insisting on long drawn trial or proof of negligence in causing the accident. It creates an absolute liability in derogation of the provisions of Fatal Accidents Act. The proposed amendment was also a deviation from the common law liability under the Law of Torts. Section 163-A mandates that an insurer shall be liable to pay in the case of death or permanent disablement due to the accident arising out of use of motor vehicle such compensation as indicated in II Schedule and that the claimant shall not be required to plead or prove that the death or disablement was due to any wrongful act, neglect or default of the owner of the vehicle. Section 163-A also provides that the Central Government is empowered to amend the Schedule from time-to-time. 18. Another section that falls for consideration is Section 140 of the 1988 Act. Section 140 deals with interim compensation by way of 'no fault liability'. Proviso to Section 140(5) of the Act is to the effect that the amount paid as compensation under any other law is to be reduced from payment under Section 166. Section 163-B also gives the option to the claimants to either claim under Section 140 or under Section 163-A but not under both. Explanation appended to Section 145 states that for removal of doubts, the claim for compensation includes the claim under Section 140 as well as 163-A. Further under Section 140(5) the owner is made liable to pay compensation under Section 140 in addition to compensation he may be made liable to pay under any other law. 19. Section 163-A reads: Section 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 of 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. (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. 20. It would be relevant to refer to Section 163B which gives an option to the claimant to either opt for compensation under Section 140 or under Section 163-A. It reads: Section 163B. Option to file claim in certain cases: Where a person is entitled to claim compensation under Section 140 and Section 163A he shall file the claim under either of the said sections and not under both. 21. Section 163-A starts with a non obstante clause and provides that notwithstanding anything contained in the Act or any other law, for the time being in force or instrument of having the force of law, the owner of the motor vehicle of the authorised insurer would be liable to pay the compensation in the case of death or permanent disability

due to the accident as indicated in the II Schedule to the legal heirs without pleading or establishing that the death or permanent disablement in respect of which the claim has been made due to any wrongful act or neglect or default of the owner of the vehicle concerned. Central Government has been authorised to amend the II Schedule from time-to-time keeping in view the cost of living by publishing an official notification in the gazette. As per Section 163-B an option is given to the claimant to either claim compensation under Section 140 or under Section 163-A but not under both. 22. Keeping in view the provisions of the Act, the intention with which Section 163A was introduced in the Act and having heard the learned Counsels for the parties on the question raised for our consideration we now proceed to answer them as under. 23. Question No. 1: Section 163-A has come into force to provide adequate compensation to victims of road accidents without the need to go into a long drawn procedure. For the first time under the Motor Vehicles Act a 'structured formula' determining the compensation to be paid has been devised. Though based on no fault liability as is the case with Section 140, Section 163 treads a new path in that. Unlike Section 140 under which the compensation is fixed, under Section 163-A it is structured. Any law which pertains to and determines the measure of damages to be awarded is a substantive law. It is more so when the damages so determined by the provision is to the exclusion of all the other provisions contained in the Act. The section brings about a new dimension which is totally alien to the scope and ambit of the other provisions in the Act which also deal with the measures of damages to be awarded. The section determines the rights of the parties finally. The determination of the rights under this section cannot be altered or affected by taking recourse to any other section in the Act as is the case with Section 140 of the Act where the compensation awarded can be set off against a higher compensation that a claimant could receive under Section 166. 25. Section 163-A also caters to a distinct and specified class of citizens viz. persons whose income per annum is Rs. 40,000/- or less, unlike Sections 140 and 166 which cater to all sections of society. A statute is the expression of the collective intention of the Legislature as a whole and a legislation which opens an avenue which is totally new and different in the matter of determining the rights of the claimants and the measure of compensation that a claimant is entitled to receive, is a substantive law and the right that is conferred under such law is a substantial right. If a statute creates a new liability or creates a new right, unless there is an express indication that the Legislature intends the statute to be retrospectively applicable, it has to be held that it has got only prospective application. Therefore, we hold that Section 163-A which confers substantial rights on the claimants, is prospective in operation. 26. Question bio. 2: This question has to be examined in the backdrop of the language employed in enacting the provision and the object sought to be achieved. Section 163A was inserted in the Act to provide adequate compensation to victims of road accidents without going into long drawn procedure. The section begins with a noil obstante clause thereby meaning that it will have full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Sub-Section (1) of Section 163A states:

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 of the victim, as the case may be. 27. Considering the purpose and the policy underlying the language used by the Legislature in Section 163-A, it becomes clear that the compensation payable under the section is limited to the compensation as indicated in the second schedule. The conferment of the right to receive the compensation prescribed under Second Schedule is notwithstanding anything contained elsewhere in the Act and is, therefore, absolute and final. The absence of any other provision relating to any other right to claim compensation after receiving the compensation under Section 163-A serves as a contradistinction between Section 163-A and Section 140 and helps to answer the question whether the compensation awarded under Section 163-A is final or interim. If it were to be the intention of the Legislature to award the compensation under Section 163-A as an interim measure, we are sure, the Legislature in its wisdom would have provided for, a section which is similar and in pari materia with Section 141 to govern the cases in which compensation under Section 163-A has been received. The fact that the Legislature has not provided for such a provision in the case of Section 163-A goes to show that the intention of the Legislature was to provide the compensation in the Second S Schedule as the final compensation and not as an interim compensation. 28. Question No. 3: This question should not detain us for long. Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Every enactment which takes away or impairs vested rights under existing laws or creates a new obligation or imposes a new duty or attaches a new disability must be presumed to be intended not to have retrospective effect. Section 163-A takes away the right of the owner or the insurer to defend the claim and creates an obligation to pay the compensation fixed under the Second Schedule without demur. Section 163-A is, therefore, a statute which deals with substantive rights and it is only if the new provision affects matters of procedure only then it would apply to all actions, both pending as well as future. This is based on the fact that no person can have a vested right in any course of procedure but it cannot be said so in the case of a substantive right. The owner or the insurer had a right to defend the claim for compensation which is a substantive right and this right is taken away by Section 163-A and therefore it can be given only prospective effect and not retrospective effect. That the intention of the Legislative was to give it only a prospective effect can also be gauged from Sub-Section (3) of Section 163A which reads: 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. 29. The fact that the Legislature reserved the right to amend the Second Schedule from time to time keeping in view the cost of living also manifests the intention of the Parliament to give the provision only prospective effect from the date the provision or the changes effected to it come into force. 30. A Single Judge of the High Court

of Rajasthan in United India Insurance Co. Ltd. v. Mehtab Bai and Ors. , has taken the same view. It was held: 20. It is, thus, well established that a distinction has to be made between the statutes dealing with the substantive rights or liabilities and the statutes dealing with the matters of procedure only and the general rule applicable to the statutes of the first category is that they are to be held prospective in operation unless the Legislature expressly makes them retrospectively operative. The statutes of the latter category are to be regarded as retrospective as well as prospective in operation unless the Legislature expressly indicates that they shall have retrospective application only. 21. For the reasons mentioned above, I am of the considered opinion that Section 163A of the Motor Vehicles Act, 1988 as inserted by amending Act No. 54 of 1994, creates a new right in favour of the claimants and this right is similar to the right under Section 140 of the Motor Vehicles Act, 1988. Simultaneously, it creates a new liability on the non-petitioners and, therefore, it is to be governed by the rule that unless the Legislature make it retrospectively operative, its operation shall be prospective only. 31. A Division Bench of Delhi High Court in Rattan Lal Methat v. Rajnder Kapoor and Anr. , has also taken the view that Section 163-A is prospective in operation and is applicable to only those cases where the accident occurs after 14.11.1994. A Single Judge of the Allahabad High Court in Kamaa Prasad and Anr. v. Jaggan and Co. and Anr. , has taken the view that Section 163-A is retrospective in operation and would be applicable to all matters pending before the Tribunal or Courts of Appeal as well as the claims subsisting on the date of enforcement of the provisions but preferred thereafter. Paragraph 16 of the judgment reads: In my opinion, therefore, the Division Bench decision in Ram Mani Gupta's case, 1985 ACJ 476 (Allahabad), cannot be cited as a binding precedent to support the submission that the language in which Section 92-A of the Act was intended to have retrospective effect and, in my opinion, all claims either pending before Tribunals or Courts or otherwise subsisting on the date of enforcement of the sections are covered and so also is the effect of Section 140 of the Motor Vehicles Act, 1988. Similar will be the position in respect of Section 163-A inserted by amendment Act No. 54 of 1994 in the Motor Vehicles Act 1988, with effect from 14-11-1994. There is nothing in Section 217 of the said Act to suggest exclusion of Section 140 to pending case. The limit of compensation in the case of death has since been enhanced to Rs. 50,000/- by means of amending Act No. 54 of which has been enforced with effect from 14.11.1994. In The Lakshmi Narayan Guin v. Niranjan Modak , it has been held: 'that change in the law during the pendency of an appeal has to be < taken into account and would govern the right of the parties'. In this view of the matter I am of the considered view that Section 140 of the Motor Vehicles Act, 1988, as amended by Motor Vehicles (Amendment) Act, 1994 (Act No. 54 or 1994) enforced with effect from 14.11.1994 shall apply to all claims pending before the Tribunal or Appellate Court as also the causes of action subsisting on 14.11.1994 notwithstanding that the accident giving rise to the claim had taken place before 14.11.1994. 32. With respect we differ with the view expressed by the Single Judge of the Allahabad High Court and agree with the view expressed by the Division Bench and the Single Judge of the Rajasthan High Court. 33.

Question No. 4: The Legislature intended to extend the benefit of this provision to a chosen class of persons. The intention to limit it to a certain class is exemplified in the Schedule appended to the statute. The Schedule forms part of the statute and it often gives the details and forms for working out the policy underlying the statute. The division of a statute into section and Schedules is a mere matter of convenience and the Schedule, therefore, has to be treated as a substantive enactment which, sometimes, may even go beyond the scope of a section to which ˆthe Schedule is appended. The Second Schedule limits the operation of the section to a limited class of persons whose income is Rs. 40,000/- or less per annum. The prescription of the outer limit of Rs. 40,000/-under the Schedule does not take away the right of the person to claim compensation under any other provision of the Act. The Legislature in its wisdom has thought it fit to provide the luxury of choice to persons whose income does not exceed Rs. 40,000/- in order to obviate the need for such persons to involve themselves in a long drawn litigation, the cost and consequences of which may work to their disadvantage and ultimate failure of justice. Such a beneficial provision which is more in the nature of advancement of social justice, keeping in view a select class of citizens, cannot be construed by Courts as applicable to all class of citizen. But, in case the person with the higher income notionally brings down his income to Rs. 40,000/- in order to present his claim under Section 163A the same can be permitted. 34. It is one of the principles of statutory interpretation that what has not been provided for in a statute cannot be supplied by Court. To do so will amount to legislating which is not the function of the Court. That it would be more logical to enlarge the application of a provision to a class of citizens by itself would be no ground for the Courts to read something into a provision not intended by the Legislature as it would amount to usurpation of the legislative function under the disguise of interpretation. 35. Question No. 5: This question relates to the adoption of proper multiplier in the case of a claim by persons other than the wife and children. The Supreme Court in U.P. State Road Transport Corporation v. Trilok Chandra and Ors. I (1996) ACC 592 (SC) : ILR 1996 Kar. 2127, has after detailed discussion of the various case-laws governing adoption of multiplier laid down the law as under: 16. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act, 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163A and 163-B in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks'. Section 163A begins with a non obstane clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accident. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payment to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim

belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas' case. 17. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years' and the multiplicand is shown to be Rs. 3,000/-. The total should be 3000 x 15 = 45,000 but the same is worked out at Rs. 60,000/-. Similarly in the second item the multiplier is 16 and the annual income is Rs. 9,000/- the total should have been Rs.1,44,000/- but is shown to be Rs.1,71,000/-. To put it briefly the table abounds is such mistaken. Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34 thereby showing lack of awareness of the background of the multiplier system in Davies' case. 36.Taking clue from the observation made by the Supreme Court that if a bachelor dies at the age of 45 and his dependents are his parents, age of the parents would be relevant in the choice of the multiplier, respective Counsel appearing for different Insurance Companies argued that the multiplier mentioned in the Second Schedule would not be applicable in case the claimants are parents or other than the wife and the children. According to them selection of multiplier cannot in all cases depend on the age of the deceased. Age of the parents is also relevant in the choice of multiplier. We do not subscribe to this view. In the structured formula given under Schedule II to Section 163-A multiplier cannot be changed when there is an express provision under the statute and if a claimant opts for the procedure laid under Section 163-A then a lesser multiplier cannot be adopted. While under Section 166 multiplier may be dependent on several factors, i.e., age of the claimants or the deceased. The same is not the case while determining compensation under Section 163A. In Trilok Chand's case, the Supreme Court was dealing with the point as to what could be the multiplier for determining the compensation. Referring to the II Schedule in which the maximum multiplier adopted was 18 years, Their Lordships held that the multiplier could not exceed 18 years purchase factor. While doing so, it was pointed out that the Schedule suffers from certain defects. The observations made by the Supreme Court in Trilok Chand's case cannot be taken as, if the Supreme Court has laid down the law that under Section 163A the age of the claimant is to be taken into consideration while adopting the multiplier. The intent of the Legislature which can be gathered from the report of the Review Committee was to provide for a system of structured compensation payable for different classes of cases depending upon the age of the deceased,

the monthly income at the time of his death, the earning potential in the case of the minor, loss of income on account of loss of limb, etc. The age of the claimant and their earning capacity are not the relevant factors for determining the compensation under II Schedule. In cases where the claimants have filed application under Section 163-A then the compensation has to be determined as per the structured formula on the basis of the age of the deceased and his monthly income at the time of his death or the earning potential in the case of the minor, loss of income on account of permanent disability as the case may be. Schedule II talks of age of victim on the basis of which the multiplier is fixed. The age of the victim thus would be the only relevant factor for determining the multiplier. Hence, we hold that the Tribunals cannot adopt a multiplier lower than the one permitted in the II Schedule on the basis of the age in the case of claimants other than the wife and children. 37. Question No. 6: The only bar provided for exercising an option in the matter of filing a claim petition for compensation is to be found in Section 163B which states, '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'. There is no prohibition in any other provision of the Act from switching over the claim made under Sections 166 to 163-A provided the accident took place on 14.10.1994 or thereafter because Section 163A came on the statute book only with effect from 14.10.1994, subject of course, to the claimants satisfying other requirements such as the out of income limit mentioned in the Second Schedule. Section 163 is a beneficial Legislation and provides for payment of compensation based on structured formula without requiring pleading or establishing that the death or permanent disability in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or any other person. Such a beneficial legislation has to be given a liberal interpretation. Therefore, we answer this question in the affirmative by holding that a claimant can move the Court for amendment of his claim petition filed under Section 166 to that of a petition under Section 163-A at any stage of the proceedings and it would be for the concerned Court to pass an order on that application in accordance with law. 38. In the result, for the foregoing reasons, we answer the questions referred to us, as follows: (i) Question No. 1: The section confers substantial rights to the claimants. (ii) Question No. 2: The compensation received under Section 163A is final and not an interim compensation. (iii) Question No. 3: The application of Section 163A is prospective and not retrospective. (iv) Question No. 4: A claim application under Section 163A is not tenable if made by a person whose income exceeds Rs. 40,000/- per annum. But, in case the person with the higher income notionally brings down his income to Rs. 40,000/- in order to present his claim under Section 163A the same can be permitted. (v) Question No 5: Answer to question No. 5 is in the negative. In a claim petition filed by the persons other than the wife and children under Section 163-A the Court cannot apply a multiplier lower than the one permitted in the Second Schedule on the basis of the age of the claimants. (vi) Question No. 6: A claimant during the pendency of the proceedings at the original or appellate stage can amend his claim petition made under Section 166

to a petition under Section 163-A provided he satisfies other conditions such as the income factor, etc. Appeal be placed before the Division Bench as per roster for decision on merits. Questions referred answered by KB. and Appeal placed before D.B.