National Insurance Co.Ltd vs Sinitha & Ors on 23 November, 2011

Equivalent citations: AIR 2012 SUPREME COURT 797, 2012 (2) SCC 356, 2012 AIR SCW 10, 2012 AAC 380 (SC), 2012 (2) AIR JHAR R 576, AIR 2012 SC (CIVIL) 217, (2011) 4 KER LT 821, (2012) 1 MAD LJ 1164, (2012) 1 PUN LR 552, (2012) 1 WLC(SC)CVL 436, (2012) 1 ACC 524, (2012) 1 TAC 234, (2012) 2 ANDHLD 112, (2011) 13 SCALE 84, (2011) 89 ALL LR 893, (2012) 2 CIVLJ 894, (2012) 1 KER LJ 69, (2012) 1 MAD LW 120, (2012) 1 RECCIVR 205, (2012) ACJ 1, (2012) 1 ALL WC 556, (2012) 4 MAH LJ 98, (2011) 4 CURCC 244, 2012 (1) SCC (CRI) 659, (2012) 5 BOM CR 820

Author: Jagdish Singh Khehar

Bench: Jagdish Singh Khehar, Asok Kumar Ganguly

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"REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.6513 of 2007

National Insurance Company Ltd. .... Appellan

Versus

Sinitha & Ors. .... Responde

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. Shijo, aged 27 years, was riding a motorcycle bearing registration no.KL-8J-6528, on 3.3.1999 on the Wadakkanchery-Kunnamkulam Road. George K., also aged 27 years, was pillion-riding with Shijo. While giving way to a bus coming from the opposite side at Kumaranelly, the motorcycle hit a big laterite stone lying on the tar road. On impact, the motorcycle overturned. Resultantly, the rider as also the pillion-rider suffered injuries. They were taken to Divine Medical Centre, Wadakkanchery, for treatment. Thereafter, the rider Shijo, was taken to West Fort Hospital, Thrissur. The pillion-rider George K. was taken to Medical College Hospital, Thrissur. Shijo succumbed to his injuries on the following day. George K., survived. The motorcycle was insured with the petitioner herein i.e. the National Insurance Company Limited. A valid act only policy, at the time of the occurrence, is admitted.

2. On 18.8.2000 the complainants, i.e. the wife, children and parents of Shijo, filed a claim petition before the Motor Accident Claims Tribunal, Thrissur, Kerala (hereinafter referred to as `the Tribunal'), under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the Act'). Through the aforesaid claim petition, the claimants prayed for compensation of Rs.8,20,500/-. The claim petition was subsequently amended, inasmuch as, the claim was sought under Section 163A of the Act. A separate claim for compensation by George K., the pillion-rider, was also filed. The claim made by George K., is not relevant for the present controversy, inasmuch as, the instant petition pertains to compensation awardable to the claimants of deceased Shijo.

3. The Tribunal by its order dated 19.4.2005, allowed the claim petition filed by the wife, minor children and parents of Shijo. They were awarded compensation of Rs.4,26,650/-. The instant compensation included Rs.2000/- towards funeral expenses, Rs.5000/- for loss of consortium to the widow, Rs.2500/- as loss of estate, Rs.4150/- towards medical expenses and Rs.5000/- as compensation for pain and suffering. Additionally, interest at the rate of 6% per annum was awarded with effect from 18.8.2000 (i.e. the date of filing the claim petition), till realization. The claimants were also awarded costs quantified at Rs.8000/-.

4. Dissatisfied with the determination rendered by the Tribunal, the National Insurance Company Limited, i.e. the appellant herein, preferred MACA no.1569 of 2006 before the Kerala High Court. The High Court decided the said appeal on 22.9.2006. The High Court upheld one of the contentions of the appellant-Insurance Company by holding, that Rs.5000/- awarded for pain and suffering, was impermissible under Section 163A of the Act. Even without issuing notice to the claimants, the aforesaid amount was ordered to be deducted from the total compensation held as payable to claimants (by the Tribunal). Besides the aforesaid determination, all other components of compensation awarded by the Tribunal, were upheld by the High Court. Still dissatisfied, the National Insurance Company Limited has approached this Court by filing the instant petition, for special leave to appeal.

5. While assailing the order of the High Court, the first contention advanced at the hands of the learned counsel for the petitioner was, that the claimants are not entitled to raise any claim for compensation because the accident in question had occurred solely and exclusively on account of

the negligence of the deceased Shijo. Insofar as the instant contention is concerned, reliance was placed on the determination rendered by the Tribunal, wherein in paragraph 8, based on the first information report, post mortem certificate, scene mahazor, report of inspection of the vehicle, inquest report and the final report, the Tribunal had concluded that Shijo was "responsible" for the accident. It was, therefore, the submission of the learned counsel for the petitioner, that no compensation was payable to the claimants on account of the death of Shijo, who was himself, responsible for the accident. It was the contention of the learned counsel for the petitioner, that it was not just and appropriate to award compensation, wherein the claimants represented the person "responsible" for the accident. Such a determination, according to the learned counsel for the petitioner, would amount to rewarding the representatives of the wrong doer.

6. In order to repudiate the aforesaid submission, advanced at the hands of the learned counsel for the petitioner, learned counsel representing the respondents, was satisfied in placing reliance on the decision rendered by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala, (2001) 5 SCC 175. The submissions advanced at the hands of the learned counsel for the respondents was, that compensation determined under Section 163A of the Act, was determined under the "no-fault" liability principle. It was pointed out, that under the "no-fault" liability principle, the fault of the party is not a relevant consideration. Accordingly, it was submitted, that the issue of "wrongful act", "neglect" or "fault", at the hands of the deceased Shijo were irrelevant for the determination of a claim made under Section 163A of the Act. Learned counsel for the respondents had placed reliance on paragraph 15 of the judgment. We are, however, extracting paragraphs 15 to 19 of the judgment hereunder, so as to examine holistically the inferences and conclusions recorded by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra):

> "15. In this context if we refer to the Review Committee's report, the reason for enacting Section 163-A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural 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 a minor, loss of income on account of loss of limb etc. can be notified and the affected party can then have option of their accepting lump-sum compensation under the Scheme of structural compensation or of pursuing his claim through the normal channels. The report of the Review Committee was considered by the State Governments and comments were notified. Thereafter, the Transport Development Council made suggestions for providing adequate compensation to victims of road accidents without going into long-drawn procedure. As per the objects and reasons, it is a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the report of the Transport Development Council, the Bill was introduced with "a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational" i.e. Section 163- A. It is also apparent that compensation payable

under Section 163-A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. In addition to the figure which is arrived at on the basis of the said criteria, the Schedule also provides that amount of compensation shall not be less than Rs 50,000. It provides for fixed amount of general damage in case of death such as (1) Rs 2000 for funeral expenses, (2) Rs 5000 for loss of consortium, if beneficiary is the spouse, (3) Rs 2400 for loss of estate, (4) for medical expenses supported by the bills, voucher not exceeding Rs 15,000. Similarly, for disability in a non- fatal accident para 5 of the Schedule provides for determination of compensation on the basis of permanent disability. Para 6 provides for notional income for those who had no income prior to an accident at Rs 15,000 per annum. There is also provision for reduction of 1/3rd amount of compensation on the assumption that the victim would have incurred the said amount towards maintaining himself had he been alive. The purpose of this section and the Second Schedule is to avoid long-drawn litigation and delay in payment of compensation to the victims or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lump- sum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be "no-fault liability" and a s observed by this Court in R amanbhai case (1987) 3 SCC 234 "in order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents". However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs 40,000 which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no- fault liability to a certain limit. This would clearly indicate that the Scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long-drawn litigation on a predetermined formula, which is known as structured-formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured- formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles. Use of specific words "also" and "in addition" in Sections 140 and 141

16. The aforesaid conclusion gets support from the language used in Sections 140, 141, 161 and 163-A. Sections 140 to 143 provide for liability of the owner of the vehicle in case of death or permanent disablement of any person resulting from an accident arising out of use of a motor vehicle or motor vehicles, to pay compensation without any pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles. By way of earliest relief, the victim is entitled to get the amount of compensation of Rs 50,000 in case of death and Rs 25,000 in case of permanent disablement. It is further provided that such claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement has occurred. Sub-section (5) of Section 140 upon which much reliance is placed by learned counsel for the Insurance Companies as well as the claimants requires consideration and interpretation, which inter alia provides that owner of the vehicle is also liable to pay compensation under any other law for the time being in force. The word "also" indicates that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. The proviso to sub-section (5) further clarifies that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of compensation payable under sub- section (2) or under Section 163-A. This is further crystallised in Section 141 which provides that right to claim compensation under Section 140 is in addition to any other right to claim compensation on the principle of fault liability and specifically excludes the right to claim compensation under the Scheme referred to in Section 163-A. Section 163-B also provides that where a person is entitled to claim compensation under Section 140 and Section 163-A, he can file the claim under either of the said sections, but not under both. Similarly, Section 141(1) also crystallises that right to claim compensation under Section 140 is in addition to the right to claim compensation in respect thereof under any other provision of the Act or any other law for the time being in force. Sub-section (2) further provides that if the claimant has filed an application for compensation under Section 140 and also in pursuance of any right on the principle of fault liability, the claim for compensation under Section 140 is to be disposed of in the first place and as provided in sub-section (3) the amount received under sub-section (2) of Section 140 is to be adjusted while paying the compensation on the principle of fault liability. On the basis of fault liability if additional amount is required to be paid then the claimant is entitled to get the same but there is no provision for refund of the amount received under Section 140(2), even if the Claims Tribunal arrives at the conclusion that the claimant was not entitled to get any compensation on the principle of fault liability. Further, Section 144 gives overriding effect to the provisions made under Chapter X by providing that the provisions of the Chapter shall have effect notwithstanding anything contained in any provision of the Act or of any other law for the time being in force. From the aforesaid sections, one aspect is abundantly clear that right to claim compensation on the basis of no-fault liability under Section 140 is in addition to the right to claim compensation on the principle of fault liability or right to get compensation under any other law. Such amount is required to be reduced from the

amount payable under the fault liability or compensation which may be received under any other law. If nothing is p ayable under the Act then the claimant is n ot required to refund the amount received by him. As against this, there is specific departure in the Scheme envisaged for paying compensation under Section 163-A. Section 163-A nowhere provides that this payment of compensation on no-fault liability on the basis of 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 and unless otherwise provided for the same cause, compensation cannot be paid again. Provisions for refund of compensation if compensation is received under any other law or under the Act

17. Further, as the legislature has not provided for refund or adjustment of compensation received "under the Act" and compensation payable under Section 163-A, it would mean that the Scheme of payment of compensation under Section 163-A, is in alternative to determination of compensation under Section 168. As stated above, Sections 140(5) and 141(3) make provisions for reduction of compensation paid under Section 140. Under proviso to sub-section (5) of Section 140, the amount of such compensation which the claimant is entitled to receive under any other law is required to be reduced from the amount of compensation payable under Section 140 or under Section 163-A. Under Section 141(3), if a person gets the compensation on principle of fault liability, then also provision is made for adjustment of compensation received under Section 140. There is no such provision for adjustment of compensation received under Section 163-A from the compensation receivable "under the Act" on the principle of fault. Similarly, Section 161 provides for payment of compensation in case of "hit-and-run" motor accidents. Under Section 161(3), in cases in respect of the death of any person resulting from a "hit-and-run" motor accident, a fixed sum of Rs 25,000 is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs 12,500. Thereafter, under Section 162, the legislature has provided for refund of compensation paid under Section 161 on the principle of "hit-and-run motor accident" by providing that the payment of compensation under Section 161 shall be subject to the condition that if any compensation is awarded "under any other provision of this Act" or "any other law" or "otherwise", so much amount as is equal to the compensation paid under Section 161 is required to be adjusted or refunded to the insurer. Under Section 162(2), duty is cast on the tribunal, court or other authority awarding such compensation to verify as to whether in respect of such death or bodily injury, compensation has already been paid under Section 161 and to make adjustment as required thereunder. Result is, the claimant is not entitled to have additional compensation but at the same time he can proceed by filing application under Section 165 or under the Workmen's Compensation Act, 1923 (i.e. other law) and if he gets compensation under either of the said provisions, the amount paid under Section 161 is to be refunded or adjusted.

18. The contention of the learned counsel for the claimants that compensation payable under Section 163-A is in addition to the determination of compensation on

the basis of fault liability and thereafter it could be adjusted on similar lines provided under Section 140 read with Section 141 or Section 162 cannot be accepted. The legislature has specifically provided Scheme of adjustment of compensation under Section 140 read with Section 141 and Section 162 if the claimants get compensation under the Act, while there are no such provisions under Section 163-A. Addition or introduction of such scheme in provisions would be impermissible.

Use of different words such as -- "any other law, under this section", "any other law for the time being in force", "provisions of this Act" or "any other provision of this Act" in different sections

19. The learned counsel for the claimants submitted that the proviso to sub-section (5) of Section 140 would mean that even in case where compensation is determined under the structured-basis formula under Section 163-A, the claimant is entitled to claim compensation on the basis of fault liability and if he gets higher amount on the basis of fault liability then from that amount compensation which is paid under Section 163-A is to be reduced. At the first blush the argument of the learned counsel appears to be attractive as the proviso to sub-section (5) of Section 140 is to some extent ambiguous and vague. It may mean that amount of compensation given under any other law may include the amount payable on the basis of fault liability, therefore, in view of the said proviso compensation amount payable under any other law is to be reduced from the compensation payable under Section 140 or 163-A. For appreciating this contention and for ascertaining appropriate me aning of the phrase " co mpensation under any other law for the time b eing in force ", the proviso to sub-section (5) is required to be considered along with other provisions. The Scheme of other provision in Section 167 indicates that the aforesaid phrase is referable to compensation payable under the Workmen's Compensation Act, 1923 or any other law which may be in force but not to the determination of "compensation under the Act", and would not include the compensation which is determined "under the provision of the Act". Thus Section 167 in terms provides that where death of, or bodily injury to, any person gives rise to claim compensation under the Act and also under the Workmen's Compensation Act, 1923, such person cannot claim compensation under both the Acts. Further, in Section 140(5), the legislature has used the words "under any other law for the time being in force" and "under any other law". In Section 141(1), the legislature has used the phrase "under any other provision of this Act or of any other law for the time being in force". In sub-section (2), the legislature has specifically provided that a claim for compensation under Section 140 shall be disposed of as expeditiously as possible and where compensation is also claimed in pursuance of any right on principle of fault, the application under Section 140 is to be disposed of in first place. Whereas, there is no such reference for payment of compensation under Section 163-A. Further, in Section 161(2), the legislature has used the phrase "any other law for the time being in force" and "provisions of this Act". Similarly, in Section 162, the legislature has used the words "under any other provisions of this Act" or "any other law or otherwise". As against

> this, in Section 163- A, the legislature has used the phrase "notwithstanding anything contained in this Act or in any other law for the time being in force" . When the legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the legislature, unless context otherwise requires. However, in relation to the same subject-matter, if different words of different import are used in the same statute, there is a presumption that they are not used in the same sense (Member, Board of Revenue v. Arthur Paul Benthall, AIR 1956 SC 35. In this light, particularly Section 141 which provides for right to claim compensation "under any other provision of this Act" or of "any other law for the time being in force", proviso to sub-section (5) of Section 140 would mean that it does not provide for deduction or adjustment of compensation payable under the Act, that is, on the principle of fault liability which is to be determined under Section 168.
>
> Sp ecific language of Section 163-A including its heading "

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(emphasis is ours)

7. It is apparent from the observations extracted herein above, that this Court had drawn the following inferences and conclusions:

> Firstly, that compensation was payable under Section 140 of the Act, without the necessity of pleading or establishing, that death or permanent disablement was due to any "wrongful act", "neglect" or "default" of the offending vehicle or vehicles. It was also concluded, that a claim under Section 140 of the Act cannot be defeated ".....by reason of any wrongful act, neglect or default of the offending vehicle/person responsible for death or permanent disablement.....". (from paragraph 15 extracted above) Secondly, that the word "also" used in sub-section (5) of Section 140 of the Act, and the proviso to sub-section (5) of Section 140 clarifies, that the amount of compensation payable under "any other law" for the time being in force, was separate and distinct from the amount of compensation payable under sub-section (2) of Section 140 or Section 163A of the Act. It was however clarified, that the amount of compensation held as payable under any other law would have to be reduced from the amount of compensation payable under Sections 140(2) or 163A of the Act (from paragraph 16 extracted above) Thirdly, sub-section (2) of Section 141 of the Act provides, that in cases where compensation is sought both under Section 140 of the Act, as also, under a provision governed by the "fault" liability principle under the Act, then the claim raised under Section 140 would be decided first. And the compensation so awarded under Section 140 aforementioned, would be adjusted while paying compensation determined under the "fault" liability principle. (from paragraph 16 extracted above) Fourthly, Section 141 of the Act provides, that the right to claim compensation on the basis of the "no-fault" liability principle under Section

140, was in addition to the right to claim compensation "under any other provision of this Act". There are some exceptions. Compensation under Section 140 would not be in addition to the compensation contemplated under the schemed Section 163 of the Act. Compensation determined under Section 140 of the Act, would be deducted from the compensation found payable, under any other provision under the Act governed by the "fault" liability principle. (from paragraph 16 extracted above) Fifthly, Section 163A nowhere provides, that payment of compensation under the "fault" liability principle, would be in addition to the right to claim compensation thereunder (under Section 163A of the Act). Accordingly, the scheme of payment of compensation under Section 163A provides an alternative right, from the one provided under Section 168 of the Act. (from paragraph 16 extracted above) Sixthly, while referring to the phrase "compensation under any other law for the time being in force" contained in the proviso to sub-section (5) of Section 140 of the Act (in its un-amended format), it was concluded, that the scheme of Section 167 indicated, that the aforesaid phrase was referable to compensation payable under the Workmen's Compensation Act, 1923 or any other law in force i.e., other than compensation contemplated under the Act. (from paragraph 17 extracted above) Seventhly, the question whether compensation determined under Section 163A of the Act would be in addition to the compensation receivable under the "fault" liability principle was answered in the negative. Accordingly, the contention that the compensation determined under Section 163A of the Act would be adjustable from the compensation found payable under any other provision governed by the "fault" liability principle, was also rejected. (from paragraph 18 extracted above) Eighthly, on a conjunctive examination of the phrase "compensation under any other law for the time being in force" occurring in the proviso to sub- section (5) of Section 140 of the Act, with the scheme of Section 167 of the Act, it was concluded, that the aforesaid phrase was referable to compensation payable under the Workmen's Compensation Act, 1923. Therefore, it was concluded that a claim cannot be raised under both the Acts i.e., the Motor Vehicles Act, 1988, and the Workmen's Compensation Act, 1923. (from paragraph 19 extracted above).

Ninthly, from the use of the words "under any law for the time being in force" used in Section 140(5) of the Act ; the words "under any other provision of this Act or of any other law for the time being in force", used in Section 141(1) of the Act ; the stipulation contained in Section 141(2) of the Act, that a claim under Section 140 is to be disposed of "as expeditiously as possible" and before compensation is determined under the "fault" liability provisions (and noticing that there was no such provision in Section 163A of the Act) ; the phrase "any other law for the time being in force" and "provisions of this Act" used in Section 161(2) of the Act ; the use of the words "under any other provision of this Act" and "any other law or otherwise" used in Section 162 of the Act ; the words "notwithstanding anything contained in this Act or in any other law for the time being in force", used in Section 163A of the Act ; it was held that all these phrases were to be examined together. When examined together it was concluded, that the compensation payable under Section 140 of the Act was not liable to deduction or adjustment out of the compensation determinable under the "fault"

> liability principle i.e., under Section 168 of the Act. (from paragraph 19 extracted above).
>
> On a collective analysis of the inferences and conclusions summarized above, this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra) held, that compensation payable under Section 163A of the Act was not as an interim measure, but was final. Therefore, compensation determined under Section 163A could not be in addition to a claim for further compensation under a separate provision governed by the "fault" liability principle. It would be relevant to notice here, that we have intentionally and deliberately drawn inferences as have been extracted hereinabove, from the observations made by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). This exercise has been ventured, so as to obviate the possibility of missing something which did not find place in paragraph 22 of the aforesaid judgment, wherein, reasons for having arrived at the eventual conclusion in the matter were recorded. This exercise was essential because the learned counsel for the respondents had primarily placed reliance only on paragraph 15 (extracted above) of the said judgment, during the course of hearing. At times it is seen, that conclusions may have been recorded keeping in mind, the pointed controversy dealt with.

8. A thorough analysis of the observations of the Bench in addition to the conclusions drawn by the Court in paragraph 22 of the judgment relied upon by the learned counsel for the respondents, we hope, would lead us to an appropriate conclusion on the matter in hand. In addition to having recorded the inferences and conclusions drawn in the judgment relied upon by the learned counsel for the respondents, it would also be necessary for us to extract hereunder the reasons recorded by this Court while rendering its judgment in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). The aforesaid conclusions recorded in paragraph 22 of the judgment are being extracted herein :

> "22. In the result, the contention of the claimants that right to get compensation under Section 163-A is additional to claim compensation on no-fault liability is rejected for the following reasons:
>
> (1) There is no specific provision in the Act to the effect that such compensation is in addition to the compensation payable under the Act.

Wherever the legislature wanted to provide additional compensation, it has done so (Sections 140 and 141).

(2) In case where compensation is paid on no-fault liability under Sections 140 and 161 in case of "hit-and-run motor accidents", the legislature has provided adjustment or refund of the said compensation in case where compensation is determined and payable under the award on the basis of fault liability under Section 168 of the Act. There is no such procedure for refund or adjustment of compensation paid where the compensation is paid under Section 163-A. (3) The words "under any

other law for the time being in force" would certainly have different meaning from the words "under this Act" or "under any other provision of this Act".

(4) In view of the non obstante clause "notwithstanding anything contained in this Act" the provisions of Section 163-A would exclude determination of compensation on the principle of fault liability. (5) The procedure of giving compensation under Section 163-A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under Section 163-A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability the claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or the vehicle concerned.

(6) Award of compensation under Section 163-A is on a predetermined formula for payment of compensation to road accident victims and that formula itself is based on criteria similar to determining the compensation under Section 168. The object was to avoid delay in determination of compensation."

Having collectively analysed all that has been noticed by us in the instant paragraph, and the reasons extracted from paragraph 22 hereinabove, we must conclude that no categorical determination emerges therefrom, that section 163A of the Act has (or has not) been founded under the "no-fault"

liability principle.

9. In order to demonstrate, that the judgment relied upon by the learned counsel for the respondents was inapplicable to the controversy in hand, learned counsel for the petitioner contended, that the issue which arose for consideration before this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra) was delineated in paragraph 2 thereof. Paragraph 2 aforesaid is being extracted herein :

> "2. The common question involved in these appeals is whether the compensation payable under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") as per the structured-formula basis is in addition or in the alternative to the determination of the compensation on the principle of fault liability, after following the procedure prescribed under the Act."

It was also pointed out, that the reasons recording the answer posed in paragraph 2 (extracted above), contained in paragraph 22 (also extracted above) clearly demonstrate, that the answer and the reasons thereof clearly reveal, that the controversy adjudicating upon therein, pertained only to the issue whether a claimant was entitled to claim further compensation (under a separate provision governed by the "fault" liability principle) after the claimant has sought and obtained compensation under Section 163A of the Act. It was submitted, that the issue in hand in the present case, is separate and distinct, namely, whether a claim for compensation made under Section 163A of the Act, can be defeated either by the owner or by the insurance company, by pleading and establishing, that the accident in question was based on the "negligence" of the offending vehicle. Secondly, it was

the contention of the learned counsel for the appellant, that while adjudicating upon the controversy in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), the attention of this Court was not invited to sub-section (4) of Section 140, nor the effect thereof, on the interpretation of Section 163A of the Act. In this behalf, it is sought to be contended, that the interpretation of sub-section (4) of Section 140 was wholly irrelevant to the issues raised and decided, in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), whereas, it is of extreme significance in the present controversy. Thirdly, it was the contention of the learned counsel for the appellant, that the use of words "Notwithstanding anything contained in this act or any other law for the time being in force or instrument having the force of law.....", not only on account of the non obstinate clause contained in Section 163A of the Act, but also on account of the overriding effect of the provision envisaged therein, nothing contained in any of the Sections referred to by this Court while deciding in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), can be deemed to have the effect of negating anything contained in Section 163A of the Act. As such, it is sought to be asserted that the judgment rendered by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), cannot have any determinative effect on the controversy arising in this case.

10. We find merit in the aforesaid contention of the learned counsel for the appellant, insofar as the first aspect of this matter is concerned. There can be no dispute whatsoever, that the issues of law arising for consideration in the present controversy as against the matter adjudicated upon by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), are separate and distinct. In fact, there is hardly any grey area which may be considered as common between the issues involved. We are also satisfied that the second contention advanced at the hands of the learned counsel for the petitioner cannot be brushed aside. Sub-section (4) of Section 140 of the Act was not referred to, nor taken into consideration, while adjudicating upon the controversy arising in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). Absence of reference to sub-section (4) of Section 140 of the Act was because the same was wholly irrelevant for the purpose of the controversy settled in the aforesaid case. We also find merit in the last contention advanced at the hands of the learned counsel for the petitioner, namely, the overriding effect of Section 163A by the use of the words "Notwithstanding anything contained in this act or any other law for the time being in force or instrument having the force of law .....". In this behalf, it would be pertinent to mention, that Section 163A was introduced into the Motor Vehicles Act, 1988 by way of an amendment carried out with effect from 14.11.1994. As against the aforesaid, it is necessary to mention that Section 144 of the Act was incorporated into the Motor Vehicles Act, 1988 from the very beginning. Section 144, it may be pointed out, is a part of Chapter X of the Motor Vehicles Act, 1988, which includes Section 140. Section 144 of the Act is being extracted herein :

> "144. Overriding effect. - The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this act or of any other law for the time being in force."

Even though, Section 144 of the Act mandates, that the provisions of Chapter X (which includes Section 140) have effect notwithstanding anything to the contrary contained in any other provision of the Act or in any other law for the time being in force. Section 144 of the Act would not override

the mandate contained in Section 163A, for the simple reason that Section 144 provided for such effect over provisions "for the time being in force", i.e., the provisions then existing, but Section 163A was not on the statute book at the time when Section 144 was incorporated therein. Therefore the provisions contained in Chapter X, would not have overriding effect, over Section 163A of the Act. As against the aforesaid, at the time of incorporation of Section 163A of the Act, Sections 140 and 144 of the Act, were already subsisting, as such, the provisions of Section 163A which also provided by way of a non-obstante clause, that it would have by a legal fiction overriding effect over all existing provisions under the Act, as also, any other law or instrument having the force of law "for the time being in force", would have overriding effect, even over the then existing provisions in Chapter X of the Act because the same was already in existence when Section 163A was introduced into the Act. The importance of the instant aspect of the matter is, that Section 163A of the Act has overriding effect over all the provisions/sections taken into consideration by this Court while deciding the controversy in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). It is therefore clear, that none of the provisions taken into consideration, in the decision relied upon by the learned counsel for the respondents can override, the legal effect of the mandate contained in Section 163A of the Act. We are, therefore, satisfied that it would be incorrect to hold, that the controversy raised in the instant case can be deemed to have been settled by this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). We have delineated the inferences drawn by us from the observations recorded in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), in extenso hereinabove. We have also reproduced, hereinabove, paragraph 22 of the judgment in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), so as to determine with some sense of exactitude the conclusions drawn in the aforesaid judgment. It cannot be stated that the issue arising in the present controversy, has been dealt with or adjudicated upon in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). Additionally, the contentions advanced at the hands of the learned counsel for appellant, more particularly reliance placed by him on sub-section (4) of Section 140 has certainly not been dealt with Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra). Thus, viewed, it is not possible for us to conclude that the issue arising in this case can be stated to have been settled. The assertion made by the learned counsel for the respondents, that the issue raised in the instant case, by the learned counsel of the petitioner, is no longer res integra, can therefore not be accepted.

11. Having arrived at the conclusion that the issue in hand has to be decided independently, we will now venture to determine whether a claim made under Section 163A of the Act is a claim under the "fault" liability principle, or under the "no-fault" liability principle. We are satisfied, that if a claim for compensation under a provision, is not sustainable for reason of a "fault" on account of any one or more of the following i.e., "wrongful act", "neglect" or "default", the provision in question would be governed by the "fault" liability principle. Stated differently, where the claimant in order to establish his right to claim compensation (under a particular provision) has to establish, that the same does not arise out of "wrongful act" or "neglect" or "default", the said provision will be deemed to fall under the "fault" liability principle. So also, where a claim for compensation can be defeated on account of any of the aforesaid considerations on the basis of a "fault" ground, the same would also fall under the "fault" liability principle. On the contrary, if under a provision, a claimant does not have to establish, that his claim does not arise out of "wrongful act" or "neglect" or "default"; and conversely, the claim cannot be defeated on account of any of the aforesaid considerations; then

most certainly, the provision in question will fall under the "no-fault" liability principle.

12. For determination of the issue under consideration, namely, whether Section 163A of the Act is governed by the "fault" or the "no-fault" liability principle, it is first relevant for us to examine Section 140 of the Act, so as to determine whether it has any bearing on the interpretation of Section 163A of the Act. Section 140 aforesaid is being extracted hereunder :

> "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 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 163A."

For the instant determination, only sub-sections (3) and (4) are relevant. A perusal of sub-section (3) reveals, that the burden of "pleading and establishing", whether or not "wrongful act", "neglect" or "default" was committed by the person (for or on whose behalf) compensation is claimed under Section 140, would not rest on the shoulders of the claimant. In other words the onus of proof of "wrongful act", "neglect" or "default" is not on the claimant. The matter however does not end with this. A perusal of sub-section (4) of Section 140 of the Act further reveals, that the claim of

compensation under Section 140 of the Act cannot be defeated because of any of the "fault" grounds ("wrongful act", "neglect" or "default"). This additional negative bar, precluding the defence from defeating a claim for reasons of a "fault", is of extreme significance, for the consideration of the issue in hand. It is apparent, that both sides are precluded in a claim raised under Section 140 of the Act from entering into the arena of "fault" ("wrongful act" or "neglect" or "default"). There can be no doubt, therefore, that the compensation claimed under Section 140 is governed by the "no- fault" liability principle.

13. In the second limb of the present consideration, it is necessary to carry out a comparison between Sections 140 and 163A of the Act. For this, Section 163A of the Act is being extracted hereunder:

> "Section 163A. Special provisions as to payment of compensation on structured formula basis - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized 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."

A perusal of Section 163(A) reveals that sub-section (2) thereof is in pari materia with sub-section (3) of Section 140. In other words, just as in Section 140 of the Act, so also under Section 163A of the Act, it is not essential for a claimant seeking compensation, to "plead or establish", that the accident out of which the claim arises suffers from "wrongful act" or "neglect" or "default" of the offending vehicle. But then, there is no equivalent of sub-section (4) of Section 140 in Section 163A of the Act. Whereas, under sub-section (4) of Section 140, there is a specific bar, whereby the concerned party (owner or insurance company) is precluded from defeating a claim raised under Section 140 of the Act, by "pleading and establishing", "wrongful act", "neglect" or "default", there is no such or similar prohibiting clause in Section 163A of the Act. The additional negative bar, precluding the defence from defeating a claim for reasons of a "fault" ("wrongful act", "neglect" or "default"), as has been expressly incorporated in Section 140 of the Act (through sub-section (4) thereof), having not been

embodied in Section 163A of the Act, has to have a bearing on the interpretation of Section 163A of the Act. In our considered view the legislature designedly included the negative clause through sub-section (4) in Section 140, yet consciously did not include the same in the scheme of Section 163A of the Act. The legislature must have refrained from providing such a negative clause in Section 163A intentionally and purposefully. In fact, the presence of sub-section (4) in Section 140, and the absence of a similar provision in Section 163A, in our view, leaves no room for any doubt, that the only object of the Legislature in doing so was, that the legislature desired to afford liberty to the defence to defeat a claim for compensation raised under Section 163A of the Act, by pleading and establishing "wrongful act", "neglect" or "default". Thus, in our view, it is open to a concerned party (owner or insurer) to defeat a claim raised under Section 163A of the Act, by pleading and establishing anyone of the three "faults", namely, "wrongful act", "neglect" or "default". But for the above reason, we find no plausible logic in the wisdom of the legislature, for providing an additional negative bar precluding the defence from defeating a claim for compensation in Section 140 of the Act, and in avoiding to include a similar negative bar in Section 163A of the Act. The object for incorporating sub-section (2) in Section 163A of the Act is, that the burden of pleading and establishing proof of "wrongful act", "neglect" or "default" would not rest on the shoulders of the claimant. The absence of a provision similar to sub-section (4) of Section 140 of the Act from Section 163A of the Act, is for shifting the onus of proof on the grounds of "wrongful act", "neglect" or "default" onto the shoulders of the defence (owner or the insurance company). A claim which can be defeated on the basis of any of the aforesaid considerations, regulated under the "fault" liability principle. We have no hesitation therefore to conclude, that Section 163A of the Act is founded on the "fault" liability principle.

14. There is also another reason, which supports the aforesaid conclusion. Section 140 of the Act falls in Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 is titled as "Liability Without Fault in Certain Cases". The title of the chapter in which Section 140 falls, leaves no room for any doubt, that the provisions under the chapter have a reference to liability "... without fault ...", i.e., are founded under the "no-fault" liability principle. It would, however, be pertinent to mention, that Section 163A of the Act, does not find place in Chapter X of the Act. Section 163A falls in Chapter XI which has the title "Insurance of Motor Vehicles Against Third Party Risks". The Motor Vehicles Act, 1988 came into force with effect from 1.7.1989 (i.e., the date on which it was published in the Gazette of India Extraordinary Part II). Section 140 of the Act was included in the original enactment under chapter X. As against the aforesaid, Section 163A of the Act was inserted therein with effect from 14.11.1994 by way of an amendment. Had it been the intention of the legislature to provide for another provision (besides Section 140 of the Act), under the "no-fault" liability principle, it would have rationally added the same under Chapter X of the Act. Only because it was not meant to fall within the ambit of the title of Chapter X of the Act "Liability Without Fault in Certain Cases", it was purposefully and designedly not included thereunder.

15. The heading of Section 163A also needs a special mention. It reads, "Special Provisions as to Payment of Compensation on Structured Formula Basis". It is abundantly clear that Section 163A, introduced a different scheme for expeditious determination of accident claims. Expeditious determination would have reference to a provision wherein litigation was hitherto before (before the insertion of Section 163A of the Act) being long drawn. The only such situation (before the insertion

of Section 163A of the Act) wherein the litigation was long drawn was under

> Chapter XII of the Act. Since the provisions under Chapter XII are structured under the "fault" liability principle, its alternative would also inferentially be founded under the same principle. Section 163A of the Act, catered to shortening the length of litigation, by introducing a scheme regulated by a pre-structured formula to evaluate compensation. It provided for some short-cuts, as for instance, only proof of age and income, need to be established by the claimant to determine the compensation in case of death. There is also not much discretion in the determination of other damages, the limits whereof are also provided for. All in all, one cannot lose sight of the fact, that claims made under Section 163A can result in substantial compensation. When taken together the liability may be huge. It is difficult to accept, that the legislature would fasten such a prodigious liability under the "no-fault" liability principle, without reference to the "fault" grounds. When compensation is high, it is legitimate that the insurance company is not fastened with liability when the offending vehicle suffered a "fault" ("wrongful act", "neglect", or "defect") under a valid Act only policy. Even the instant process of reasoning, leads to the inference, that Section 163A of the Act is founded under the "fault" liability principle.

16. At the instant juncture, it is also necessary to reiterate a conclusion already drawn above, namely, that Section 163A of the Act has an overriding effect on all other provisions of the Motor Vehicles Act, 1988. Stated in other words, none of the provisions of the Motor Vehicles Act which is in conflict with Section 163A of the Act will negate the mandate contained therein (in Section 163A of the Act). Therefore, no matter what, Section 163A of the Act shall stand on its own, without being diluted by any provision. Furthermore, in the course of our determination including the inferences and conclusions drawn by us from the judgment of this Court in Oriental Insurance Company Limited vs. Hansrajbhai V. Kodala (supra), as also, the statutory provisions dealt with by this Court in its aforesaid determination, we are of the view, that there is no basis for inferring that Section 163A of the Act is founded under the "no-fault" liability principle. Additionally, we have concluded herein above, that on the conjoint reading of Sections 140 and 163A, the legislative intent is clear, namely, that a claim for compensation raised under Section 163A of the Act, need not be based on pleadings or proof at the hands of the claimants showing absence of "wrongful act", being "neglect" or "default". But that, is not sufficient to determine that the provision falls under the "fault" liability principle. To decide whether a provision is governed by the "fault" liability principle the converse has also to be established, i.e., whether a claim raised thereunder can be defeated by the concerned party (owner or insurance company) by pleading and proving "wrongful act", "neglect" or "default". From the preceding paragraphs (commencing from paragraph

12), we have no hesitation in concluding, that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163A of the Act by pleading and establishing through cogent evidence a "fault" ground ("wrongful act" or "neglect" or "default"). It is, therefore, doubtless, that Section 163A of the Act is founded under the "fault" liability principle. To this effect, we accept the contention advanced at the hands of the learned counsel for the petitioner.

17. Having recorded our conclusions herein above, it is essential for us to determine whether or not the compensation awarded to the claimants/respondents in the present controversy, by the Tribunal, as also, by the High Court, is liable to be set aside on the plea of "negligence" raised at the hands of the petitioner. The award rendered by the Tribunal, as also, the decision of the High Court in favour of the claimants/respondents is, therefore, liable to be reappraised keeping in mind the conclusions recorded by us. In case, the petitioner can establish having pleaded and proved negligence at the hands of the rider Shijo, the petitioner would succeed. The pleadings filed before the Tribunal at the hands of the petitioner, are not before us. What is before us, is the award of the Tribunal dated 19.4.2005. We shall endeavour to determine the plea of negligence advanced at the hands of the learned counsel for the petitioner from the award. The Tribunal framed the following issues for consideration :

"1) Who are responsible for the accident?

2) What, if any is the compensation due and who are liable?

3) What is the annual income of the deceased?

4) Whether the OP (2280/00) is maintainable under Section 168A of the N.V. Act?"

It is difficult to understand the true purport of the first issue framed by the Tribunal. A person may be "responsible" for an act, yet he may not be "negligent". Illustratively, a child who suddenly runs onto a road may be "responsible" for an accident. But was the child negligent? The answer to this question would emerge by unraveling the factual position. A child incapable of fending for himself would certainly not be negligent, even if he suddenly runs onto a road. The person in whose care the child was, at the relevant juncture, would be negligent, in such an eventuality. The driver at the wheels at the time of the accident is responsible for the accident, just because he was driving the vehicle, which was involved in the accident. But considering the limited facts disclosed in the illustration can it be said that he was negligent? Applying the limited facts depicted in the illustration, it would emerge that he may not have been negligent. Negligence is a factual issue and can only be established through cogent evidence. Now the case in hand. In the present case also, the negligence of Shijo shall have to be determined from the factual position emerging from the evidence on record. Issue no.(1) framed by the Tribunal therefore, may not provide an appropriate answer to the issue in hand. Besides there being no issue framed by the Tribunal for adjudicating "negligence" in the accident under reference, it is also clear that the petitioner-Insurance Company did not seek the courts intervention on such a plea. It is also relevant to mention, that no witness was produced by the petitioner-Insurance Company before the Tribunal. During the course of hearing, learned counsel for the petitioner only relied upon the conclusions drawn by the Tribunal on issue no.(1). For this, our attention was drawn to paragraph 8 of the award rendered by the Tribunal which is being extracted hereunder :

> "8. Issue No.1 : This issue arises now only in O.P. 2281/2000. PW1 admitted that she has seen the accident. Exhibits A1 to A5 and Exhibit A10 are records from the connected criminal case charge sheeted under Sections 279, 337 and 304A, IPC as

> against the deceased Shijo. They are the copies of the FIR, post mortem certificate, scene mahazor, report of inspection of the vehicle, final report and the inquest report, respectively. In the absence of contra evidence I find that the deceased Shijo was responsible for the accident."

The Tribunal in holding, that the rider Shijo was responsible for the accident, had placed reliance on copies of the first information report, post mortem certificate, scene mahazor, report of inspection of vehicle, inquest report and final report. Neither of these in our considered view, can constitute proof of "negligence" at the hands of Shijo. Even if he was responsible for the accident, because the motorcycle being ridden by Shijo had admittedly struck against a large laterite stone lying on the tar road. But then, it cannot be overlooked that the solitary witness who had appeared before the Tribunal had deposed, that this has happened because the rider of the motorcycle had given way to a bus coming from the opposite side. Had he not done so there may have been a head-on collusion. Or it may well be, that the bus coming from the opposite side was being driven on the wrong side. This or such other similar considerations would fall in the realm of conjectural determination. In the absence of concrete evidence this factual jumble will remain an unresolved tangle. It has already been concluded hereinabove, that in a claim raised under Section 163A of the Act, the claimants have neither to plead nor to establish negligence. We have also held, that negligence (as also, "wrongful act" and "default") can be established by the owner or the insurance company (as the case may be) to defeat a claim under Section 163A of the Act. It was therefore imperative for the petitioner-Insurance Company to have pleaded negligence, and to have established the same through cogent evidence. This procedure would have afforded an opportunity to the claimants to repudiate the same. Has the petitioner discharged this onus? In the present case, only one witness was produced before the Tribunal. The aforesaid witness appeared for the claimants. The witness asserted, that while giving way to a bus coming from opposite side, the motorcycle being ridden by Shijo, hit a large laterite stone lying on the tar road, whereupon, the motorcycle overturned, and the rider and the pillion-rider suffered injuries. The petitioner insurance- company herein did not produce any witness before the Tribunal. In the absence of evidence to contradict the aforesaid factual position, it is not possible for us to conclude, that Shijo was "negligent" at the time when the accident occurred. Since no pleading or evidence has been brought to our notice (at the hands of the learned counsel for the petitioner), it is not possible for us to conclude, that the inverse onus which has been placed on the shoulders of the petitioner under Section 163A of the Act to establish negligence, has been discharged by it. We, therefore, find no merit in the first contention advanced at the hands of the learned counsel for the appellant.

18. The second contention advanced at the hands of the learned counsel for the petitioner was, that Shijo being the rider of the motorcycle, cannot be treated as a third party. It was pointed out, that the claim under Section 163A can only be raised at the behest of a third party. It seems, that the instant determination raised at the hands of the learned counsel for the petitioner, is based on the determination rendered by this Court in Oriental Insurance Company Limited vs. Jhuma Saha, (2007) 9 SCC 263, wherein, this Court held as under :

> "10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did

> not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable."

According to the learned counsel for the petitioner, since the rider of the vehicle involved in the accident was Shijo himself, he would stand in the shoes of the owner, and as such, no claim for compensation can be raised in an accident caused by him, under Section 163A of the Act.

19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.

20. For the reasons recorded herein above, we find no merit in the instant Special Leave Petition. The same is, accordingly, dismissed.

.....J. (Asok Kumar Ganguly) .....J. (Jagdish Singh Khehar) New Delhi;

November 23, 2011.