

The Oriental Insurance Co. Ltd vs Hansrajbhai V. Kodala & Ors on 4 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1832, 2001 AIR SCW 1602, (2002) 1 EASTCRIC 480, (2002) 1 JCR 168 (SC), 2001 UJ(SC) 2 881, (2001) 105 COMCAS 743, 2001 (2) LRI 549, 2001 (5) SCC 175, 2001 ALL CJ 2 1301, (2001) 4 JT 477 (SC), (2001) 2 CIVLJ 859, (2001) WLC(SC)CVL 370, (2001) 1 ACC 618, (2001) 3 SCALE 223, (2001) 1 ANDHWR 214, (2001) 2 MAD LJ 180, (2001) 3 ANDH LT 34, (2001) 1 UC 713, 2001 BOMCRSUP 643, 2001 SCC (CRI) 857, (2001) 2 ALL WC 1447, (2001) 3 SCJ 191, (2001) ILR (KANT) 4602, (2001) 3 MAD LW 622, (2001) 3 GUJ LR 2156, (2001) 2 KER LT 235, (2001) 2 PUN LR 663, (2001) 2 RAJ LW 231, (2001) 2 TAC 312, (2001) 3 SUPREME 252, (2001) 1 ACJ 827, (2001) 43 ALL LR 584

Bench: M.B. Shah, D.P. Mohapatra

CASE NO.:

Appeal (civil) 2568 of 2001
Appeal (civil) 2569 of 2001
Appeal (civil) 2570 of 2001
Appeal (civil) 2571 of 2001
Appeal (civil) 2572 of 2001
Appeal (civil) 2573 of 2001

PETITIONER:

THE ORIENTAL INSURANCE CO. LTD.

Vs.

RESPONDENT:

HANSRAJBHAI V. KODALA & ORS.

DATE OF JUDGMENT: 04/04/2001

BENCH:

M.B. Shah & D.P. Mohapatra

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T.....T...J Shah, J.

Leave granted.

The common question involved in these appeals is whether the compensation payable under Section 163A 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?

For convenience we would refer to few facts in Civil Appeal arising out of S.L.P. (Civil) No.8742 of 1999 in which the judgment and order dated 4.8.98 passed by the High Court of Gujarat at Ahmedabad in FA No.2473 of 1996 is challenged. Petition claiming compensation of Rs. 2,50,000/- was filed before the Claims Tribunal on the ground that one bus bearing registration No. G.J.3T 9815 met with an accident and Mayur, son of respondent Nos. 1 and 2, aged about 6 years died as a result thereof. The claimants also filed an application under Section 163A of the Act for interim compensation on structured formula basis. The Insurance Company- appellant contended that as the bus was not insured with it, it was not liable to pay compensation. The Claims Tribunal granted the prayer of the respondents and directed the appellant to pay Rs.1,62,000/- to the respondents as interim compensation. The appellants preferred appeal before the High Court contending inter alia that in order to provide quicker relief to the accident victims, Section 163A was inserted and is not meant for interim compensation but is an alternative to the determination of compensation under Section 168. It was further contended that the application under Section 163A was a substantial application and not an interim application. The High Court by judgment and order dated 4.8.1998 held that the award under section 163A was an interim award and the claimants were entitled to proceed further with determination of compensation under Section 168 of the Act. That order is under challenge.

For determining the question involved, the scheme for payment of compensation under the Act can be divided as under: -

- (i) Section 140 For no-fault liability in case of death or disablement;
- (ii) Section 161 In case of hit and run motor accidents, where the identity of the vehicle cannot be ascertained compensation amount is Rs.25000/- in case of death and Rs.12500/- in case of grievous hurt;
- (iii) Section 163A Special provisions as to payment of compensation on structured formula basis without establishing or proving any wrongful act or neglect or default of any person;
- (iv) Section 168 Determination of compensation payable in pursuance of any right on the principle of fault liability.

Chapter XII provides for constitution of Claims Tribunals by the State Government for the purpose of adjudicating the claims for compensation and the procedure thereof. The Claims Tribunal is required to determine the application for payment of compensation either under section 140 or

section 163A on the basis of no-fault liability and also on the basis of right to receive the compensation on the principle of fault liability on the basis of Law of Torts, as modified by the Fatal Accidents Act, 1855 read with Motor Vehicles Act, 1988.

For appreciating the rival contentions, it would be necessary to refer to the relevant provisions of the Sections 140 (Chapter X), 161, 162, 163A, 163B (Chapter XI) and 167 (Chapter XII) of the Act which are as under:

140. Liability to pay compensation in certain cases on the principle of no fault.

(1) Whether death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding the 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.

141. (1) Provisions as to other right to claim compensation for death or permanent disablement. (1) The right to claim compensation under section 140 in respect of death or permanent disablement of

any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition) to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second- mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

161. Special provisions as to compensation in case of hit and run motor accident. (1) For the purposes of this section, section 162 and section 163

(a) grievous hurt shall have the same meaning as in the Indian Penal Code, 1860 (45 of 1860);

(b) hit and run motor accident means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) scheme means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand five hundred rupees.

(4) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub- section.

162. Refund in certain cases of compensation paid under section 161. (1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section

161) or any other law, the Tribunal, Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall,

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub- section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation. For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

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 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 Workmens 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.

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.

167. Option regarding claims for compensation in certain cases. Notwithstanding anything contained in the Workmens Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmens Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

Further, Section 164 empowers the Central Government to make rules for the purpose of carrying into effect the provisions of Chapter XI which include making such rules for

(a) the forms to be used for the purpose of the said chapter and (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of the Chapter. Learned counsel appearing on behalf of the respondents, however, submitted that upto now, the Central Government has not framed any such rules as provided under Section 164. Thereafter, Chapter XII deals with Claims Tribunals. Section 165 provides for establishment of Claims Tribunals for the purpose of adjudicating upon claims for compensation in respect of accidents involving a death of, or bodily injury to, persons arising out of or use of motor vehicles, or damages to any property of a third party so arising, or both, and Explanation to sub-section (1) provides that claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicle includes claims for compensation under Section 140 and 163A. Hence, the application claiming compensation under Section 140 or 163A and/or on the right to claim compensation on the principle of fault liability is required to be filed before the Claims Tribunal. Section 166 provides who can make application for such compensation and where it could be filed. Additionally, sub-section (4) of section 166 makes provision that the Claims Tribunal shall treat the report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under the Act and sub-section (6) of section 158 provides for submitting the report to the Claims

Tribunal by the officer in charge of the police station as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under Section 158 is completed by a police officer. Section 168 requires the Claims Tribunal to determine the amount of compensation which appears to it to be just and specify person or persons to whom compensation is to be paid by making an award. Such award shall also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Proviso to sub-section (1) of Section 168 makes it clear that in an application which is filed under Section 165, if there is a claim for compensation under Section 140 in respect of death or permanent disablement of any person, the same is to be disposed of in first place in accordance with provisions of Chapter X (i.e. Sections 140 to 143).

Legislative HistoryStatement of Objects and Reasons:

From the provisions quoted above, it appears that no specific mention is made that remedy provided under Section 163A is in addition or in the alternative to the determination of compensation on the basis of fault liability. Section 163A was not there in the original Act of 1988. It was inserted by Act No. 54 of 1994 w.e.f. 14.11.1994. Hence, for arriving at the proper conclusion, it would be necessary to cull out legislative intent by referring to the legislative history as well as Objects and Reasons for inserting the said provision.

The Law Commission of India in its 119th Report in the Introductory Chapter observed [para 1.6] that previously there was recommendation for inserting provision in the Motor Vehicles Act to extend protection to victims of hit and run accidents where the person liable to pay such compensation or his whereabouts cannot be ascertained after reasonable effort by providing that in such an event, the person entitled to such compensation shall be entitled to receive it from the State. In para 1.7 for introducing provision for no fault liability, the Commission observed as under:

By 1980, a wind was blowing that compensation to the victims of motor accidents should be by way of social security and the liability to pay the same must be No-fault liability. The law, as it stands at present, save the provision in Chapter VIIA, inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay compensation and which fault caused the harm such as bodily injury or death. In the event of death of a victim of a motor accident and the consequent harm caused to his dependants, the question whether the person responsible for the action causing harm had committed a fault or it was an inevitable accident, is hardly relevant from the point of view of victim or his/her dependants. The expanding notions of social security and social justice envisaged that the liability to pay compensation must be a No-fault liability.

Before the Motor Vehicles Act 1939 was repealed by the present Act, the Legislature introduced Chapter VII-A in the Motor Vehicles Act, 1939. While interpreting the said provisions, this Court in Gujarat State Road Transport Corporation, Ahmedabad

v. Ramanbhai Prabhatbhai and Another [(1987) 3 SCR 404] referred to the aforesaid recommendations made by the Law Commission and observed thus: -

When the Fatal Accidents Act, 1855 was enacted there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in *Rylands v. Fletcher*, [1868] L.R. 3 H.L.330, 340. From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. Hit and run cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation through out the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the Act. Sections 92-A to 92-E of the Act are to be found in Chapter VIIA.

The Court further observed as under: - This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified. The special provisions contained in section 109-A to section 109-C of the Act providing for a scheme for granting relief to victims or the legal representatives of victims of hit and run motor vehicle accident cases is another novel effort on the part of the Government to remedy the situation created by the modern society which has been responsible for introducing so many fast moving vehicles on roads.

Thereafter a Committee to Review the Provisions of Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989 (hereinafter referred to as the Review Committee) was set up by the Government of India in March 1990. The Review Committee in its report suggested changes in a number of provisions in the Act. The Review Committee considered that determination of the claims cases pending before the Claims Tribunal takes a long time. To obviate such delay, proposals were made that finalisation of compensation claims would greatly facilitate to the advantage of claimants, the vehicle owners as well as the insurance companies, if a system of structured compensation can be introduced. Under such scheme the affected party can have the option of their accepting the lump sum compensation as is notified in

that scheme of structured compensation or of pursuing his claim through the normal channels. Thereafter, the Review Committee considered the suggestion of General Insurance Corporation that claimants should first file their claims with Motor Accident Claims Tribunals and the insurers be allowed six months time to confirm their prima facie liability subject to defences available under the Act. After such confirmation, the claimants should be required to exercise their option for conciliation under Structured Compensation Formula within stipulated time.

Finally, the Committee also observed: Para 4.11.2:

.In case a claimant opts for conciliation, necessary consent award may be given by MACT and if he does not opt for it, he may proceed with regular Motor Accidents Claims Tribunal in the usual course. The Committee also recommended that the decision of the insurer to accept liability before the expiry of the stipulated period should be the final one and after it is available it will be open to the insured to claim compensation under the structured compensation.

Further, the statement of objects and reasons for amending the Act inter alia mentions that the recommendations of the Review Committee were forwarded to the State Governments for comments and they generally agreed with these recommendations. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their views in the matter. The Transport Development Council made certain suggestions and the relevant suggestion is, (b) providing adequate compensation to victims of road accidents without going into long drawn procedure. The proposed legislation inter alia provide for (h) increase in the amount of compensation to the victims of hit and run cases;

(k) a new pre-determined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational.

The next question is whether the recommendations made by the Review Committee are reflected in the provisions, which are inserted by the said Act. It is contended that the relevant provisions nowhere provide that lump sum compensation payable under the structured formula basis is alternative and optional to the determination of compensation under Section 168. As stated above, the Legislature has not specified or clarified that compensation payable under Section 163-A is in the alternative or in addition. Therefore, we are referring to the reasons for inserting Section 163A in context of other provisions. For the purpose of interpretation in such cases, this Court in *Utkal Contractors and Joinery P. Ltd. & Ors. Vs. State of Orissa & Ors.* [(1987) 3 SCC 279] observed that reason for a statute is a safest guide to its interpretation and held thus (P.288-89): -

.The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to

Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. Again, while the words of an enactment are important, the context is no less important.

In this context if we refer to the Review Committees Report, the reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes 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 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 pre-determined formula for payment of compensation to road accidents 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 pre-determined formula for payment of compensation to road accident victims on the basis of age/income which is more liberal and notional, i.e. Section 163A. It is also apparent that compensation payable under Section 163A 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 said criteria, 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.15000/-. Similarly, for disability in 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 accident at Rs.15000/- 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 as observed by this Court in Ramanbhai's case (Supra), 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 an 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 vehicles 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 long time. That mischief is sought to be remedied by introducing Section 163A 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:

The aforesaid conclusion gets support from the language used in Sections 140, 141, 161 and 163A. 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, 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 163A. This is further crystalized 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 163A. Section 163B also provides that where a person is

entitled to claim compensation under Section 140 and Section 163A, he can file the claim under either of the said sections, but not under both. Similarly, Section 141(1) also crystalises 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 any thing 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 payable under the Act then the claimant is not required to refund the amount received by him. As against this, there is specific departure in the scheme envisaged for paying compensation under Section 163A. Section 163A 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:

Further, as the legislature has not provided for refund or adjustment of compensation received under the Act and compensation payable under Section 163A, it would mean that Scheme of payment of compensation under Section 163A 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 163A. 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 163A 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 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 Compensation Act (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.

The contention of the learned counsel for the claimants that compensation payable under Section 163A is in addition to the determination of compensation on the basis of fault liability and thereafter it could be adjusted on the 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 is no such provisions under Section 163A. 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:

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 163A, 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 163A 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 said proviso compensation amount payable under any other law is to be reduced from the compensation payable under Section 140 or 163A. For appreciating this contention and for ascertaining appropriate meaning of the phrase compensation under any other law for the time being in force, the proviso to sub-section (5) is required to be considered along with other provisions. The scheme of other provision section 167 indicates that the aforesaid phrase is referable to compensation payable under the Workmen 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. This 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 Workmens 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 163A. 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 163A, 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 presumption that they are not used in the same sense. {Re: Board of Revenue v. Arthur Paul AIR 1956 SC 35 at 38}. 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. Specific Language of Section 163A including its heading:

Lastly, for interpretation and construction of Section 163A, we would refer to its heading and language. The heading is Special provisions as to payment of compensation on structured formula basis. At the outset, we would make it clear that for interpretation of the words of Section the language of the heading cannot be used to control the operation of the Section, but at the same time being part of the statute it prima-facie furnishes some clue as to the meaning and purpose of Section. [Re: K.P. Varghese v. ITO [(1982) 1 SCR p.629 at 647]. In case of ambiguity or doubt heading can be referred to as an aid in construing the provision. This heading indicates that the legislature has envisaged special provision for paying compensation on structural formula basis instead of paying the compensation by long drawn litigation after establishing fault liability. Section also begins with non-obstante clause notwithstanding anything contained in this Act or any law for the time being in force. This would mean that it is not subject to any adjudication of right to claim compensation as provided under the Act. The owner of the motor vehicle or the authorised insurer would be liable to pay compensation due to accident arising out of the use of motor vehicle. Section 163-B further clarifies that claim petition can be

filed either under Section 140 or under Section 163A but not under both sections.

The learned counsel for the claimants however submitted that if we compare the language used in Sections 163A and 140(1), it would be apparent that Section 140 contemplates payment of compensation by the owner of the vehicle. As against this, Section 163A contemplates payment of compensation by the owner of the vehicle or authorised insurer. It is submitted that even if we read the said phrase as owner of the motor vehicle or authorised insurer as owner of the motor vehicle or authorised insurer on the assumption that of is wrongly used, then also it is their contention that Section 163A envisages payment either by the authorised insurer or by the owner of the motor vehicle. It has wider implication and, therefore, compensation beyond maximum of Rs.50000/- is provided in Second Schedule and hence the payment under Section 163A should not be considered as alternative to payment of compensation under the fault liability. In our view, it is true that Section 140 talks of payment of compensation by the owner of the vehicle, while Section 163A after reading of as or would mean that owner of the vehicle or the authorised insurer would be liable to pay compensation under Section 163A. But that would not make any difference because determination of compensation under Section 163A is final and not as an interim measure. As stated above, the legislature has deliberately not provided that it is in addition to the compensation payable on the principle of fault liability.

There is no provision for adjusting the compensation payable under Section 163A with the other payment on fault liability under the Act. In the result, the contention of the claimants that right to get compensation under Section 163A 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 163A.

(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 163A would exclude determination of compensation on the principle of fault liability.

(5) The procedure of giving compensation under Section 163A is inconsistent with the procedure prescribed for awarding compensation on fault liability. Under section 163A compensation is awarded without proof of any fault while for getting compensation on the basis of fault liability claimant is required to prove wrongful act, neglect or default of the owner of the vehicle or vehicles concerned.

(6) Award of compensation under section 163A is on 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.

In the result, the question involved in these matters is answered accordingly. The appeals filed by the Insurance Companies are allowed and the impugned judgments and orders are quashed and set aside. However, there will be no order as to costs.

Before parting with the judgment, we would like to draw the attention of the Central Government for revision and appropriate correction of the Second Schedule, which provides for payment of compensation on structured formula basis, by exercise of its power under Section 163A(3).

The learned counsel for the parties submitted that in *U.P. State Road Transport Corporation and others v. Trilok Chandra and others* [(1996) 4 SCC 362 Para 18] this Court has pointed out errors in the Second Schedule thus: We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffers from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be Rs.3000. The total should be $3000 \times 15 = 45,000$ 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 9000; 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 in such mistakes. 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 dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants 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 emphasize 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 v. Powell Duffryn Associated Collieries Ltd.*, [1942 AC 601 : (1942) 1 All ER 657].

In addition, the learned counsel also pointed out that in case of fatal accident and disability in non-fatal accident, it has been provided that notional income for the claimant who had no income prior to accident shall be Rs.15000/- per annum and still however the Second Schedule provides table of income ranging from Rs.3000/- to Rs.40000/- and the brake-up also does not provide any calculation for Rs.15000/-, as the columns in the Schedule inter alia provide for compensation for a person having income of Rs.12000/-, and thereafter straightway at Rs.18000/-. The learned counsel also submitted that despite the specific provision in Section 163A(3) that the Central Government may, keeping in view the cost of living, by notification in Official Gazette from time to time amend the Schedule, nothing has been done so far. Further, by order dated 30.8.2000, this Court again noticed number of anomalies in the Second Schedule and, therefore, thought it fit to have assistance of either the Attorney General of India or the Solicitor General of India. When the matter was called out on 15.12.2000, Mr. Altaf Ahmad, ASG, stated before the Court that the order passed by this

Court on 30.8.2000 has already engaged serious attention of the Ministry of Surface Transport Department and the Government was considering the matter for bringing necessary correction in the Second Schedule of the Motor Vehicles Act. Thereafter, we again sought assistance of the Additional Solicitor General on the interpretation of Section 163A and also to verify whether there are corrections in the Second Schedule. Learned Additional Solicitor General stated that amendment might take some time. In this view of the matter, we think it would be appropriate if the Central Government takes necessary action as early as possible under Section 163A(3).

Ordered accordingly.