

Joshi Rajendrakumar Popatlal vs Thakor Ramnaji Hamirji on 30 January, 2019

Author: S.G. Shah

Bench: S.G. Shah

C/FA/4866/2018

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL No. 4866 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G. SHAH Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? No

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JOSHI RAJENDRAKUMAR POPATLAL

Versus

THAKOR RAMNAJI HAMIRJI

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Appearance:

MR JIGAR G GADHAVI(5613) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 1,2

RULE SERVED BY DS(65) for the RESPONDENT(s) No. 3,4

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CORAM: HONOURABLE MR.JUSTICE S.G. SHAH

Date : 30/01/2019

ORAL JUDGMENT

1. Heard learned advocate Mr.Gadhvi for the appellant.

Respondent though duly served, has remained absent. Perused the record.

2. It is undisputed fact that the Presiding Officer of the Tribunal has failed to realize the basic principle of C/FA/4866/2018 JUDGMENT Civil Jurisprudence, more particularly, not only his statutory judicial power but duties and responsibilities as an Officer of the Tribunal under the M.V. Act.

3. The appellant herein is original claimant in Motor Accident Claims Petition No.259/2012 (old No.81/2004) before the Motor Accident Claims Tribunal, Mehsana. Whereas respondent Nos.1 to 4 are original respondent Nos.1 to 3 and 5 amongst which respondent Nos.1, 2 and 3 are respectively driver, owner and insurer of one of the motor vehicle involved in the accident being jeep No.GAQ-5651. Whereas, respondent No.4 is insurer of another vehicle involved in the accident being motor cycle No.GAD-3907 which is owned and driven by the claimant himself which has been deleted before the Tribunal.

4. In such Motor Accident Claims Petition, except insurance company of both the vehicles i.e. opponent C/FA/4866/2018 JUDGMENT respectively before us, none of the other opponents being driver and owner of jeep No.GAQ-5651 had appeared and contested the claim petition. Even thereafter, when Tribunal has determined issue No.1 so as to confirm that the injured claimant has sustained injuries on account of rash and negligent driving of the driver of the vehicle involved in the accident, the Tribunal has failed to award just and reasonable compensation. For refusing to award compensation, unfortunately, the Tribunal has assigned the reasons to the effect that the applicant has not produced his driving licence showing that he has valid and effective driving licence and that applicant has not produced the licence of driver of offending vehicle involved in the accident and also not produced registration certificate of any of the vehicle involved in the accident showing the ownership of the vehicle and has also not proved the insurance policy of any of the offending vehicle/s and, therefore, applicant is not entitled to get C/FA/4866/2018 JUDGMENT compensation from the opponents.

5. Surprisingly, paragraph No.2 of the impugned judgment specifically reads as under: -

" The opponent Nos.1 and 2 though served with the process, not appeared before the Tribunal and therefore, the present petition proceeded ex-part against the said opponents. The opponents No.3 and 4 though appeared, but have not filed their Written Statement to the claim petition."

6. Thereby, now it is very much clear that opponent Nos.1 and 2 being driver and owner of the jeep though served have remained absent and, therefore, adverse inference is to be drawn against them assuming that they have nothing to say against the pleadings in the claim petition wherein it is alleged that accident has took place because of rash and negligent driving of opponent No.1 and that vehicle C/FA/4866/2018 JUDGMENT is owned by opponent No.2. Therefore, there is no reason for the Tribunal to observe that the claimant has not produced RC Book to prove the ownership of opponent No.2 as a owner of the jeep in question and to dismiss the claim petition against driver and owner when negligence of the owner is proved on record by the claimant whereby driver and owner are vicariously as well as jointly and severally liable to pay compensation to the injured victim. Similarly, when opponent Nos.3 and 4 though appears through advocate have not filed their

Written Statement and thereby when there is no defence in the form of pleading objecting the existence of insurance policy for the vehicle under reference, the Tribunal has really committed a blunder in recording that since insurance policy is not proved, insurance company is also not liable.

7. It is undisputed fact that in claim petition, copy of which is produced with the appeal memo, there is categorical disclosure that opponent No.3 is insurer C/FA/4866/2018 JUDGMENT of jeep No.GAQ-5651 whereas opponent No.2 is owner of the same vehicle and opponent No.1 is driver. After such pleading and statement on oath before the Tribunal, if none of the respondent/s has objected about such pleading, I fail to understand that how and why the Tribunal has observed that order cannot be passed against them because claimant has failed to prove the ownership and insurance by producing RC book and insurance policy. This categorically shows that the Tribunal has failed to read the provisions of law properly though practically only MV Act and that too only Chapters X, XII and XII comprising of Sections 140 to 210 are only material for adjudication of such claim petitions. At present, we are concerned with Section 158 of the Act which reads as under: -

"158. Production of certain certificates, licence and permit in certain cases :-

(1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce"

C/FA/4866/2018 JUDGMENT

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving licence; and

(d) in the case of transport vehicle, also the certificate of fitness referred to in Sec. 56 and the permit, relating to the use of the vehicle. (2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving licence and permit referred to in sub-sec. (1) to a police officer, he shall produce the said certificates, licence and permits at the police station at which he makes the report required by Sec. 134. (3) No person shall be liable to conviction under sub-sec. (1) or sub-sec. (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-sec. (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident :

C/FA/4866/2018 JUDGMENT Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle. (4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of Sec.

146 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(5) In this section, the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Sec. 146.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or a report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within 30 days from the date of recording of information or as the case may be on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof C/FA/4866/2018 JUDGMENT to the concerned insurer, and where a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such claims Tribunal and insurer." Section 166: Application for compensation:

"(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

8. The bare reading of such section makes it clear that information regarding certificate of insurance, certificate of registration and driving licence is to be collected by the Investigating Agency and such information is to be forwarded to the Tribunals within 30 days from the date of accident or date of representing before the concerned Tribunal and Tribunal can consider such form being form No.54 as per Rule 150 of the Central Motor Vehicle Rules, 1989 as an application for compensation. Such prescribed form which is named as Accident Information Report reads as under: -

FORM 54 [See Rule 150(a) and (2)] Accident Information Report C/FA/4866/2018
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1. Name of the Police Station :
2. CR No. / Traffic Accident report :
3. Date, time and place of the accident :
4. Name and full address of the Injured/deceased :
5. Name of the Hospital to which he/she was removed :

6. Registration Number of vehicle and the type of the vehicle :

7. Driving Licence particulars :

(a) Name and address of the driver :

(b) Driving licence number and date of expiry :

(c) Address of the issuing authority :

(d) Badge No. in case of public service vehicle :

8. Name and address of the owner of the vehicle at the time of accident :

9. Name and address of the Insurance Company with whom the vehicle was insured and the particulars of the Divisional Officer of the said insurance company :

10. Number of Insurance Policy/Insurance Certificate and the date of validity of the Insurance Policy/Insurance Certificate :

11. Registration particulars of the vehicle (class of vehicles) :

(a) Registration No. :

(b) Engine No. :

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(c) Chassis No. :

12. Route Permit Particulars :

13. Action taken, if any, and the result thereof:

9. The bare perusal of above form makes it clear that requisite information for awarding compensation would be available from such report. So far as disclosure of names of the litigants are concerned, prescribed form under the rules being form Comp. A.4/R u/S.211(1) of the M.V. Act is also clear wherein column No.9 specifically confirms that the applicant has to disclose the name and address of the driver, owner and insurer of the vehicle involved in the accident only if he is aware about such details because such details are now mandatory for the Investigating Agency to forward it to the concerned Tribunal. All such statutory provisions have been considered by the Court.

10. In the case of S L SUCHDAY vs. STATE OF GUJARAT AND ANR reported in 1995(1) GLR 629, as back as in the year 1995, the Division Bench C/FA/4866/2018 JUDGMENT of this Court has also

produced Section 158 and form No.54 in the judgment and held as under:

"9. However, in order to mitigate sufferings and agony of poor victims of unfortunate road accident, a statutory duty was cast on the police officer investigating the accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Such a report gave jurisdiction to Claims Tribunal if it was so inclined to treat the report as if it were an application for compensation under the Act. Many a times, because of negligence and poverty of the poor victims of unfortunate road accidents, application for compensation was not filed within one year and therefore, such victims were totally debarred from claiming compensation. Taking into consideration the untold hardship which might result to victims of unfortunate road accidents, the legislature introduced a salutary provision casting a statutory duty on the police officer investigating the accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. This was a valuable right and this provision needed to be brought to the notice of the authorities for strict compliance so that the report submitted by the police officer to the Claims C/FA/4866/2018 JUDGMENT Tribunal could be treated as an application for compensation under the Act. Unless the report was forwarded by the officer in-charge of the Police Station to the Claims Tribunal, the Claims Tribunal had no occasion to take appropriate action in the matter of awarding compensation to the victims. Sec. 158(6) gave valuable right to all persons who sustained injury in motor accident. Not only a valuable right was conferred on the person who sustained injury in motor accident, but there was a statutory duty on the police officer investigating accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Such a report gave jurisdiction to the Claims Tribunal if it was so inclined to treat the report as if it were an application for compensation. Therefore, we were inclined to give necessary directions to Police Officers for strict compliance of Sec. 158(6) of the Act and to the Tribunal to treat the report forwarded to it as claim application. However, Mr. A. R. Mehta, learned Counsel who has appeared as amicus curiae has brought to the notice of the Court the Motor Vehicles (Amendment) Act, 1994 which has come into force with effect from November 14, 1994. The Motor Vehicles (Amendment) Act, 1994 has amended Sec. 158(6) of the Act and the amended Sec. 158(6) provides as under :-

C/FA/4866/2018 JUDGMENT "(6). As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

Sub-sec. (3) of Sec. 166 of the Motor Vehicles Act, 1988 laying down period of limitation, is omitted by the Motor Vehicles (Amendment) Act, 1994 (Act 54 of 1994). Sec. 166(4) of the Act is also amended by the Motor Vehicles (Amendment) Act, 1994 and the amended Sec. 166(4) of the Act reads as under :-

"(4). The Claims Tribunal shall treat any report of accident forwarded to it under sub-sec. (6) of Sec.

158 as an application for compensation under this Act".

10. As noted earlier, the Tribunal had discretion under the unamended Sec. 166(4) of the Act to treat the report filed by the officer in-charge of the Police Station as if it were an application for compensation under the Act. Now, under the amended provisions C/FA/4866/2018 JUDGMENT of Sec. 166(4) of the Act that discretion is taken away and the Claims Tribunal is under an obligation to treat any report of accident forwarded to it under sub-sec. (6) of Sec. 158 as an application for compensation under the Act. The intention of the legislature in amending the provisions of Secs. 158(6) as well as 166(4) and omitting sub-sec. (3) of Sec. 166 of the Motor Vehicles Act, 1988 is to relieve the poor, ignorant and helpless victims of unfortunate road accidents from the rigours of the provisions of sub-sec. (3) of Sec. 166 of the Act which provided that a Claims Tribunal has no jurisdiction to condone delay beyond a period of one year. The newly introduced provisions not only require to be brought to the notice of officers in-charge of different Police Stations in the State, but also to the Claims Tribunals in the State so that justice can be meted out to the poor, ignorant and helpless victims of unfortunate road accident. Under the circumstances, a case is made out for issuing necessary directions to the respondents to issue appropriate instructions to the officers in-charge of different Police Stations in the State to comply with the provisions of Sec. 158(6) of the Act. Necessary directions are also required to be issued to the Claims Tribunal to treat the report which may be submitted by the officer in-charge of the Police Station as an application for compensation under C/FA/4866/2018 JUDGMENT this Act irrespective of the fact whether the claimants have filed any application claiming compensation or not.

11. For the foregoing reasons, the petition is allowed and following directions are issued :-

(1) The Director General and Inspector General of Police, Gujarat State is hereby directed to issue necessary instructions in vernacular language requiring the officers in-charge of different Police Stations in the State of Gujarat to forward information recorded by a Police Officer regarding any accident involving death or bodily injury to any person or report prepared under Sec. 158 of the Motor Vehicles Act, 1988 at the earliest and in no circumstances later than 30 days from the date of recording of information or as the case may be, on completion of such report to the Claims Tribunal having jurisdiction over the area in which the accident occurs and a copy thereof to the concerned insurer.

(2) The Director General and Inspector General of Police, Gujarat State is directed to issue appropriate instructions in vernacular language to the officers in charge of

different Police Stations requiring them that in case a copy of information recorded regarding any accident involving death or bodily injury to any person or report under Sec. 158 is C/FA/4866/2018 JUDGMENT made available to the owner, a copy of the same should also be forwarded to the Claims Tribunal having jurisdiction over the area in which the accident occurs and to the insurer within 30 days. (3) The Director General and Inspector General of Police is hereby directed to issue appropriate instructions as early as possible and latest within one month from the date of receipt of writ. (4) All the Claims Tribunals in the State are also directed to treat report of any accident forwarded to the Tribunal under sub-sec. (6) of Sec. 158 as an application for compensation under the Act irrespective of the fact whether the claim petition is instituted by the concerned claimant or not. (5) If and when any claim petition is filed by any person entitled to file such claim petition under the appropriate provisions of the Act, both the petitions or all such petitions may be clubbed together and be consolidated by the Tribunal."

11. Similarly, the same issue has been taken care by Hon'ble Supreme Court in following cases, Hon'ble Supreme Court has held as under:-

* Three Judges Bench in JAI PRAKASH V/S NATIONAL INSURANCE CO LTD AND ORS REPORTED IN 2010 (2) SCC 607, after C/FA/4866/2018 JUDGMENT considering the problems faced by the claimants issued following direction:

"Directions to Police Authorities [8] The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in C/FA/4866/2018 JUDGMENT case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim {in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

[9] To avoid any administrative difficulties in immediate implementation of Sections 158(6) of the Act, we permit such implementation to be carried out in three stages. In the first stage, all police stations/claims Tribunals in the NCT Region and State Capital regions shall implement the provisions by end of April 2010. In the second stage, all the police stations/claims Tribunals in district headquarters regions shall implement the provisions by the end of August 2010. In the third stage, all police stations/Claims Tribunals shall implement the provisions by the end of December, 2010. The Director Generals shall ensure that necessary forms and infrastructural support is made available to give C/FA/4866/2018 JUDGMENT effect to Section 158(6) of the Act.

[10] Section 196 of the Act provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 146 shall be punishable with imprisonment which may be extended to three months, or with fine which may extend to Rs. 1000/-, or with both. Though the statute requires prosecution of the driver and owner of uninsured vehicles, this is seldom done. Thereby a valuable deterrent is ignored. We therefore direct the Director Generals to issue instructions to prosecute drivers and owners of uninsured vehicles under Section 196 of the Act.

[11] The Transport Department, Health Department and other concerned departments shall extend necessary co-operation to the Director-Generals to give effect to Section 158(6).

Directions to the Claims Tribunals [12] The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the C/FA/4866/2018 JUDGMENT deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act.

[13] For complying with Section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle

involved in the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident C/FA/4866/2018 JUDGMENT (by any 'Police Officer - Advocate -Doctor' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs.

The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categories the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims Tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in General Manager, KSRTC v. Susamma Thomas, 1994 2 SCC 176.

(h) As the proceedings initiated in pursuance of C/FA/4866/2018 JUDGMENT Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation. [14] The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

SUGGESTIONS FOR INSURANCE COMPANIES [15] In cases of death, where the liability of the C/FA/4866/2018 JUDGMENT insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok

Adalat, endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of this Court.

[16] In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them." * Another Three Judges Bench in JESH AND ORS V/S RAJBIR SINGH AND ORS reported in 2013 (9) SCC 54, has also observed and held as under;

"[15] Underlying principle discussed in the above decisions is with regard to the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb to niceties or technicalities, in such matters. Attempt C/FA/4866/2018 JUDGMENT of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim. [16] There is another reason why the Court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act No. 54 of 1994 with effect from 14.11.1994, the Report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under Sub-section (6) of Section 158 has to be treated as an Application for Compensation. Section 158 (6) of the Act reads as follows:

158. Production of certain certificates, licence and permit in certain cases.-

(1) to (5) xxx (6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the C/FA/4866/2018 JUDGMENT concerned insurer, and, where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.

[17] Section 166(4) of the Act reads as follows:

166(4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act.

[18] Prior to the amendment in 1994, it was left to the discretion of the Tribunal as to whether the report be treated as an application or not. The pre- amended position under Sub-section (4) of Section 166 of the Act, read as under:

(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks it necessary so to do, treat the report as if it were an application for compensation under this Act.

[19] In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the C/FA/4866/2018 JUDGMENT Application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation."

12. In view of above facts and circumstances, the Tribunal has certainly committed an error in dismissing the claim petition even when none of the opponent/s has resisted the claim petition, more particularly, when driver and owner has remained absent and when insurance company has even not filed written statement and, thereby, there is no pleading by the insurance company that vehicle was not insured with it. Whereas, though claimant has to prove his case, this being a specific jurisprudence under the Special Act and when law specifically empowers the Tribunal to award the compensation even in absence of formal claim petition to the fact, based upon information received in prescribed form No.54, when this Court has by order dated 19.12.2018 called upon the Tribunal to verify that whether such form is not received and if not received, what steps have been taken by it, C/FA/4866/2018 JUDGMENT surprisingly, the Presiding Officer of the Tribunal has conveyed to this Court by his letter dated 7.1.2019 which is forwarded to this Court by office note dated 11.1.2019 that no steps had taken to call for such information from the Investigating Agency in connection with the respondent Nos.1 to 3 of vehicle No.GAQ-5651 as the claim petition is too old and neither the petitioner nor the respondent had ever raised any issue regarding production of form No.54. Such explanation is not satisfactory at all and it may be recollected to deal with it strictly when Presiding Officer of the Tribunal has an audacity to say that irrespective of statutory duty caste upon the Investigating Agency and the Tribunal, they did not perform such duty and find fault with the litigant that they have never raised issue. If it is to be accepted as such, then, it is surprising that in absence of such information and in absence of pleading, how and why Tribunal has decided the claim petition in favour of the driver, owner and insurer though it is held that the driver was C/FA/4866/2018 JUDGMENT negligent and thereby claimant is entitled to compensation.

13. In view of above facts and circumstances, when Tribunal has failed to award just and reasonable compensation and when even failed to calculate the amount of compensation based upon available evidence on record, though this Court is empowered to award just and reasonable compensation based upon available evidence on record, more particularly, when none of the opponents has remained present even before this Court, to avail reasonable opportunity to the litigants to prove their case properly, it would be appropriate to remand back the matter to the Tribunal with a specific direction to decide it afresh in accordance with law after calling upon requisite information from the Investigating Agency irrespective of an old case of accident wherein at-least chargesheet would be available and would confirm that there is no charges u/S.158 of the M.V. Act and, thereby, there is reason C/FA/4866/2018 JUDGMENT to believe that necessary information has been

disclosed by the concerned person before the Investigating Officer.

14. Therefore, the impugned judgment and award dated 21.11.2017 in Motor Accident Claims Petition No.259/2012 (Old Case No.81/2004 is hereby quashed and set aside with remanding the matter back to the Motor Accident Claims Tribunal, Mehsana with a direction to the Principal District Judge to assign such matter to the Presiding Officer who is aware about applicable law with reference to such claim petitions.

15. The decision in the case between Union of India and others v. Kamalkshi Finance Corporation, reported in AIR 1992 SC 711 = (1992) 1 SCC 648, by Hon'ble Supreme Court needs to be referred at this stage with a hope that Judicial Officers would not dare to discard the decisions of the Hon'ble Supreme Court in any manner. In such reported C/FA/4866/2018 JUDGMENT case, Hon'ble Supreme Court has upheld the judgment of the High Court quashing the order of the Assistant Collector and directed the department to allocate the matter to a competent officer to pass a proper order and held that the observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them. It may so happen that non following of judicial pronouncement by higher authority may result into as an act of indiscipline for which litigant may agitate the issue before appropriate forum.

16. This appeal stands disposed of in above terms.

Sd/-

(S.G. SHAH, J) VATSAL S. KOTecha