

## DIGEST OF MOTOR ACCIDENT CLAIM CASE LAWS

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### Accident

An accident is an occurrence or an event which is unforeseen and startles one when it takes place but does not startle one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words an event or occurrence the happening of which is ordinarily expected in the normal course by almost everyone undertaking a rail journey cannot be called an "accident". But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident." **Union of India v. Sunil Kumar Ghosh AIR 1984 SC 1737, Para 12). Smt. Alka Shukla v. Life Insurance Corporation of India AIR 2019 SUPREME COURT 2088**

'accidental means' and 'accidental death' are to be read as similar or whether in order for an accidental insurance claim to succeed, the means causing the injury or death also have to be accidental in nature. For the purposes of this case, it is not necessary to conclusively decide this question. In order to sustain a claim under the accident benefit cover, it must be established that the assured has sustained a bodily injury which resulted solely and directly from the accident. There must, in other words exist a proximate causal relationship between the accident and the bodily injury. Moreover, the accident must be caused by outward violent and visible means. The expression "outward violent and visible" signifies that the cause of the accident must be external. Moreover, the injury must be the cause of the death within the period of 180 days. There has to be proximate relationship between the injury and the death to the exclusion of all other causes. The outcome of the present case involves interpretation of the accident benefit cover. Breaking down the clause into its components, what it postulates is that:

- (i) The assured must sustain a bodily injury;
- (ii) The injury must solely and directly result from an accident;
- (iii) The accident must be caused by outward, violent and visible means;
- (iv) The injury must solely, directly and independently of all other causes result in the death of the assured; and
- (v) Death must ensue within a period of 180 days from the injury caused in the accident. **Smt. Alka Shukla v. Life Insurance Corporation of India AIR 2019 SUPREME COURT 2088**

Includes any untoward, unexpected event. **2013 AIR SCW 283 "Param Pal Singh v. M/s. National Insurance Co."**

Passenger lighting from the bus as it moved abruptly which caused him to fall, resulting in serious injuries and led to his death on the following day is an accident, the benefit of future prospects in computing the income of the deceased is to be given **NUTAN RANI AND ANR VERSUS GURMAIL SINGH AND ORS 2018 0 Supreme(SC) 761**

## APPEAL

When in an appeal the appellant could have raised any of the grounds against which he is aggrieved, we fail to understand, as to how a respondent can be denied to file cross-objection in an appeal filed by the other side challenging that part of the Award with which he was aggrieved. We find, that the said distinction as sought to be drawn by the High Court is not in tune with conjoint reading of the provisions of Section 173 of the M.V. Act; Rule 249 of the Bihar Motor Vehicle Rules, 1992; and Order XLI rule 22 of the CPC. **URMILA DEVI AND ORS.) VERSUS BRANCH MANAGER, NATIONAL INSURANCE COMPANY LTD. & ANR. 2020 0 Supreme(SC) 96 Civil Appeal No. 838 of 2020 (Arising Out of SLP(C) No. 12230 of 2016) Decided on : 30-01-2020**

An appeal filed under Section 173 of the Act is akin to Section 96 of Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). The scope of the appellate powers under Section 173 of the Act, how such powers should be exercised while hearing the appeal and why it is necessary for the Courts to assign the reasons for reaching to the conclusion while passing any order/judgment was examined by this Court in the case of Uttar Pradesh State Road Transport Corporation vs. Mamta & Ors., [\(2016\) 4 SCC 172](#), G. Saraswathi & Ors. vs. Rathinammal & Ors., [\(2018\) 3 SCC 340](#) and Central Board of Trustees vs. Indore Composite Pvt. Ltd., [\(2018\) 8 SCC 443](#). **Rupa Roy – Versus The New India Assurance Company Ltd. 2019 0 Supreme (SC) 791**; (Decided On : 29-07-2019)

An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. **Sudarsan Puhan VS Jayanta Ku. Mohanty & Ors. 2018 0 Supreme(SC) 902; AIR 2018 (SC) 4662**

High Court to decide the appeal keeping in view the powers conferred on it by the statute. The impugned judgment also does not satisfy the requirements of Order XX Rule 4 (2) read with Order XLI Rule 31 of the Code which requires that judgment shall contain a concise statement of the case, points for determination, decisions thereon and the reasons.. The appeal thus succeeds and is accordingly allowed in part. The impugned judgment is set aside case remanded back for fresh decision **U.P.S.R.T.C. Vs. Mamta and Ors. , AIR 2016 SC 948 2016(2) PLJR293,**

An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See National Insurance Company Ltd. v. Naresh Kumar and Ors. ((2000) 10 SCC 198 and State of Punjab and Anr. v. Navdeep Kaur and Ors. (2004) 13 SCC 680]. **U. P. S. R. T. C. v. Km. Mamta and Ors .AIR 2016 SUPREME COURT 948**

Point No.(i) : The position in cases where the claimants implead the insurer as a respondent in the claim petition. if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it. (para 8)

Point (ii) : Maintainability of a joint appeal by the owner of the vehicle (Insured) and Insurer

There is no dispute that when an award is made by the Tribunal, the owner of the vehicle (insured), being a person aggrieved, can file an appeal challenging his liability on any ground, or challenge the quantum of compensation. An appeal which is "maintainable" when the owner of the vehicle files it, does not become "not maintainable" merely on account of the insurer being a co-appellant with the owner. When the insurer becomes a co-appellant, the owner of the vehicle does not cease to be a person aggrieved. **AIR 2012 SUPREME COURT 86 "United India Insurance Co. Ltd. v. Shila Datta": (2012) 1 SCC (Cri) 328 :**

**(2011) 10 SCC 509**

Accident compensation - Appeal against award - Claimant seeking permission for producing additional documents in support of his claim - Permission granted as Tribunal is required to award fair compensation - Matter remanded to Tribunal for fresh consideration. **2010 AIR SCW 1615 "Meenaben Pankaj kumar Joshi v. New India Assurance Co. Ltd." : (2009)9SCC363,**

Against judgment of single Judge in appeal against award of Motor Accident Claims Tribunal - Not tenable - Appellant can however file SLP before Supreme Court. **2010 AIR SCW 5824 "Geeta Devi v. Puran Ram Raigar"**

High Court to dispose of the appeal by a speaking and reasoned order. **AIR 2009 SC (Supp) 586 "National Insurance Co. Ltd. v. Bharat Bhushan"**

Appeal – High Court cannot dismiss the appeal filed by the insurer on merits on the ground that the Tribunal did not assign reasons while granting permission under section 170 of the Act **National Insurance Company Ltd. Vs. Meghji Naran Soratiya and others 2009 AIR SCW 2340**

Appeal - Maintainability - Order of Tribunal awarding compensation on no fault liability basis under S. 140 - Amounts to award under S. 173 - Is appeal able. **AIR 2007 S. C. 2582 "Yallwwa v. National Insurance Co. Ltd.": (2007) 6 SCC 657**

Where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as a party-respondent .by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under S. 149(2). **2011 AIR SCW 6541 "United India Insurance Co. Ltd. v. Shila Datta"**

Appeal - Necessary party - Appeal by Insurance Company on ground that offending vehicle was not insured at time of accident - Ground raised by Insurance Company is intimately linked with entitlement of claimant to receive compensation from Insurance Company - Dismissal of appeal as against claimant as it is not required to be heard - Not proper. **AIR 2007 SUPREME COURT 1102 "National Insurance Co. Ltd. v. Mam Chand"**

In a series of other decisions too, the same view was taken. In Rita Devi (Smt.) and others v. New India Assurance Co. Ltd. and another (2000) 5 SCC 113, this Court held that if the Insurance Company had not obtained leave from the Tribunal before filing the appeal, the appeal preferred by the Insurance Company before the High Court would not be maintainable in law. **AIR 2003 SUPREME COURT 3127 "United India Insurance Co. Ltd. v. Jyotsnaben S. Patel"**

Appeal provided under the Motor Vehicles Act, 1988 is on a limited ground for the insurers as the appeal can only be filed with regard to violation of section 149 (2) of the Motor Vehicles Act, 1988. Where appeal is barred a Civil Revision can be filed. **Sadhana Lodh Vs. National Insurance Company 2003 AIR SCW 930: (2003) 3 SCC 524: AIR 2003 S. C. 1561**

If the Permission under section 170 of the Motor Vehicles Act, 1988 has not been granted to the Insurance Company it has no right to appeal **Branch Manager National Insurance Company Vs. Raj Banshi Ram & others 2003 (3) PLJR 599**

When the remedy of appeal is provided under the statute, filing a writ application cannot enlarge the grounds of the appeal. **Sadhana Lodh Vs. National Insurance Company 2003 AIR SCW 930. (2003) 3 SCC 524:**

**AIR 2003 S. C. 1561 SEE ALSO Bijoy Kumar Dugar Vs. Bidyadhar Dutta 2006 (2)PLJR 287: (2006) 3 SCC 242**

If permission under section 170 of the Motor Vehicle's Act, 1988 has been granted the appeal by the insurer shall be maintainable as a matter of right, wherein the High Court can go in all contentions and if not granted the appeal will be filed with regard to violation of section 149 (2) of the Motor Vehicles Act, 1988 only **National Insurance Company Vs. Mastan (2006) 2 SCC 641**

The appellate Court not to interfere in appeal unless the Tribunal has applied a wrong principle of law or the awarded amount is too low or too high **Bihar Co-operative Motor Vehicle Insurance Society vs. Rameshwar Raut AIR 1970 Pat 172 see also Nance vs. British Columbia Electric Rly Co. Ltd. 1951 - 2 All ER 448, Nagappa Mahadev Doddaamani Vs. New India Assurance Company 1999 ACJ 1128**

Appeal has to be preferred against an order under section 140 of the Motor Vehicles Act as it is an award. **Oriental Insurance Company vs. Moiuddin Kureshi and others 1994 (1) PLJR 79. See also National Insurance Co.Ltd. Vs. Hari Narayan Ojha & others 1999 ACJ 1188; New India Assurance Vs. Janki Devi 2000 ACJ 587**

Amount paid for the maintainability of the appeal has to be adjusted with the award under challenge and released to the Claimant **United India Insurance Company Ltd. Vs. Manju Devi 1998 (3) PLJR 506**

Insured has to take permission to file an appeal under section 170 of the Motor Vehicles Act, 1988 **Shankarayya vs. United India Insurance Company Ltd. (1998) 3 SCC 140**

Court fee payable in appeal is Rs. 15 and not Rs. 250.. **New India Assurance Company Vs. Renu Devi 1999 (2) PLJR 640 : 1999 (2) BLJR 1390.**

The quantum of compensation is not a ground available to the insurer for the purpose of filing appeal. **Chinnama George VS N.K. Raju (2000) 4 SCC 130 : 2000 ACJ 777**

Unless any of the condition Sec. 149 (2) exists i.e. there has been a breach of condition of the policy or policy is void and such defense is taken in the pleading and placed before the claims tribunal, the insurer is legally bound to satisfy the award and is barred from filing an appeal, even joint appeal with the owner of the vehicle is incompetent unless the grounds mentioned under section 149 (2) is available to it **National Insurance Company Vs. Nicolletta Rohatagi (2002) 7 SCC 456. , Chinnama George VS N.K. Raju (2000) 4 SCC 130. National Insurance Co. Ltd. Vs. Madhuri Kuer 2001 (1) PLJR 73 ; Oriental Insurance Company Vs. Suresh Kumar 2001 (4) PLJR 304; Oriental Insurance Company Vs. Viveka Nand Singh 2001 (4) PLJR 510**

It is not necessary that permission under section 170 of the Motor Vehicles Act, 1988 is by a reasoned order. If the Insurance Company pursuant to the permission cross examined the witnesses and there after the award is passed, the Insurance Company becomes the person aggrieved within the meaning of section 170 of the Motor Vehicles Act, 1988 . **United India Insurance Company Vs. Jyotsnaben Sudhirbhai Patel and others (2003) 7 SCC 212**

Insurance Company cannot be refused remedy of appeal since it falls within the ambit of any aggrieved person by the award of the of claims tribunal **United India Insurance Company vs. Bhushan Sachedeva 2002 AIR SCW 273 : (2002) 2 SCC 265**

Appeal is not maintainable against an award based on a compromised settlement **Ignatia Kujur Vs. National Insurance Co. Ltd. 2000 ACJ 381**

The Insurance Company can only file an Appeal only on the grounds as stated in section 149 (2) of the Motor Vehicles Act, **1988 National Insurance Company Vs. Nicolletta Rohatagi (2002) 7 SCC 456. see also Branch Manager National Insurance Company vs. Arjun Prasad 2006 (1) PLJR 637**

The High Court in appeal cannot interfere in appeal, if the Tribunal has fixed the liability on two persons and one of them has paid the other persons appeal on quantum, High Court could not make out a new case and direct the appellant to pay the whole awarded amount **Administrator Bihar SRTC VS Ranjana Majhi AIR 2007 SUPREME COURT 649: (2006) 6 SCC 67**

### **ACCIDENT OUT OF THE USE OF A MOTOR VEHICLE**

The expression "an accident out of the use of a motor vehicle" would apparently mean and contemplate a situation where the motor vehicle had met with an accident thereby causing death or disablement to either the occupants of the vehicle or any other person who has come under the wheels of the vehicle and in no circumstances did the provision contemplate that such compensation should be paid to kidnappers or hijackers who are killed by villagers for their overt act only because they had been using a particular motor vehicle. **Senior Divisional Manager, National insurance Company Ltd.Vs. Sayeeda Khatoon 2009 (4) PLJR431**

The question, which falls for consideration in this case, is as to whether the accident, for which the compensation has been claimed under the provisions of the Act, arose out of the **use of motor vehicle**. The Tribunal, by the impugned order, has held that the death of the deceased was **a murder simpliciter** and as such it cannot be termed as **a death or permanent disablement due to accident** arising out of the **use of motor vehicle** entitling payment of compensation in terms of sec. 163-A of the Act. **Ranju Rani Alias Ranju Devi Versus Branch Manager, The New India Assurance Company Limited 2002 4 PLJR 341; 2002 0 Supreme(Pat) 1024;**

'Accident arising out of use of motor vehicle' - Petrol tanker falling on Kutcha ground and came to rest after being hit by rear left side of truck - After 4 hours tanker exploded due to petrol leakage resulting in death of persons gathered to collect petrol - Cannot be said to be an accident 'arising out of use of motor vehicle' - **AIR 2011 SUPREME COURT 666 "New India Assurance Co. Ltd. v. Yadu Sambhaji More"**

The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and the driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant." **Samir Chanda v. Managing Director, Assam State Transport Corporation, (1998) 6 SCC 605.**

when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. there was causal relationship with the accident which had resulted in the death of the claimant. **Kalim Khan & Others Versus Fimidabee & Others – AIR 2018 SC 3209; 2018 0 Supreme(SC) 688;**

### **ACCIDENT OUT OF THE USE OF A MOTOR VEHICLE AND RAILWAY**

Taxi came in collision with train - Claim against both to pay compensation - Tenable before Motor Vehicle Claims Tribunal. **Union of India Appellant v. Bhagwati Prasad (D) and others AIR 2002 SUPREME COURT 1301**

Accident due to collision between railways and bus at unmanned level crossing and railway also found negligent due to non-exercise of duties under Railways Act, an award for compensation could be passed against Railways by the claims Tribunal under Motor Vehicles Act **Union of India Appellant v. United India Insurance Co. Ltd. and others AIR 1998 SUPREME COURT 640**

### **ASCERTAINMENT OF THE EFFECT OF THE PERMANENT DISABILITY**

On the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. **SRI NAGARAJAPPA Vs. THE DIVISIONAL MANAGER, THE ORIENTAL INSURANCE CO. LTD. AIR 2011 SC 1785 SEE ALSO ARVIND KUMAR MISHRA Vs. NEW INDIA ASSURANCE CO. LTD. AND ANOTHER AIR (SCW) 6085**

### **AUTHOR OF THE DOCUMENT**

The only way by which documents could have been proved and hence admitted into evidence was by producing the author of the documents who could have proved the contents of the documents **National Insurance Company Limited Versus Premlata Devi 2007 3 PLJR 141 SEE ALSO The New India Assurance Co.Ltd. Versus K.Kanagasabapathy 2003 1 JLJR 109; 2002 0 Supreme(Jhk) 1202 (DB)**

The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The **author** of the said certificate had not been examined. Unless the **author** of the certificate examined himself, it was not admissible in evidence. **Rajesh Kumar @ Raju versus Yudhvir Singh & Anr. AIR 2008 (SC) 2396; 2008 AIR(SCW) 3967**

### **AWARD CALCULATION**

Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. **AIR 2013 SUPREME COURT 3830 "Vimal Kanwar v. Kishore Dan"**

Once the permanent disability is fixed, taking into consideration, its impact on the employment/profession of the claimant, the compensation has to be awarded. **DINESH SINGH Vs. BAJAJ ALLIANZ GENERAL INSURANCE CO LTD AIR 2014 SC (Supp) 1709 : [see also ICICI LOMBARD GENERAL INSURANCE CO. LTD. Versus AJAY KUMAR MOHANTY 2018 0 Supreme(SC) 208;**

Other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take home salary **MANASVI JAIN Vs.**

**DELHI TRANSPORT CORPORATION AIR 2014 SC (Supp) 1746 : [2014] 0 Supreme(SC) 52896 (3 judges) :**

The actual salary should be read as actual salary less tax. Hon'ble Apex Court in Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal reported 1979 (2) SCC 354 has been pleased to hold that definition of salary under Rule 2(h) of the Income Tax Act includes dearness allowance, if the terms of the employment so provide, but excludes all other allowances and perquisites. In view of the aforesaid verdict of Bench of five judges of Hon'ble Apex Court and the verdict of Hon'ble Apex Court given in Gestetner Duplicators Pvt. Ltd. (supra), the income of the person should be considered as the actual salary of the said person which includes basic pay, D.A., fixed personal pay **Sarita Rai Vs. Ramayan Singh 2018 (1) BLJ 166 : 2018 (2) PLJR 462 ; see also Sunil Sharma and Ors. Vs. Bachitar Singh and Ors. 2011 0 AIR(SCW) 2811; 2011 3 BBCJ(SC) 266**

"income" should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax, although some elements thereof may or may not be taxable due to the exemption conferred thereupon under the statute. **Vijay Kumar Rastogi v. Uttar Pradesh State Roadways Transport Corporation. AIR 2018 SUPREME COURT 819**

The proper date for fixing the rate of exchange at which foreign currency amount has to be converted into currency of the country. Exchange rate as prevalent on date claim petition was filed has to be applied. **AIR 2013 SUPREME COURT 2293 "Jiju Kuruvila v. Kunjuamma Mohan"** .

It is not in dispute that at the time of accident, the age of the deceased was 36 years. Therefore, the Tribunal and the High Court were not right in applying the multiplier of 10. They should have adopted the **multiplier of 15** for the purpose of determining the amount of compensation. **AIR 2012 SUPREME COURT 3381 "New India Assurance Co. Ltd. v. Gopali"** see also **AIR 2012 SUPREME COURT 3381 "New India Assurance Co. Ltd. v. Gopali"**

Increase towards future prospects - Cannot be denied to those employed on fixed wages or self employed - 30% rule has to be equally applied. **AIR 2012 SUPREME COURT 2185 "Santosh Devi v. National Insurance Company Ltd."**

Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are : (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the Insurance Companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps **AIR 2009 SUPREME COURT 3104 "Sarla Verma v. Delhi Transport Corporation"** see also **AIR 2009 SUPREME COURT 3226 "Rani Gupta v. M/s. United India Insurance Co. Ltd."**

- (i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.
- (ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as

indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

- (iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.
- (iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.
- (v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma.
- (vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.
- (vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration. : **Reshma Kumari Vs. Madan Mohan : [2013] 2 Supreme 577 , [2013] 9 SCC 65, [2013] 3 BBCJ(SC) 425 : AIR 2013 SC (Supp) 474 see also Munna Lal Jain Vs. Vipin Kumar Sharma [2015] 0 Supreme(SC) 418 2015 AIR SCW 3105**

Income of deceased - Future prospects - Addition towards - Deceased, Sub-Inspector dying at age of 36 years - 50% to be added for future prospects. Income of deceased - Deduction towards taxes - Salary of deceased within taxable range - 30% to be deducted towards taxes. (Para 8) **2010 AIR SCW 4391 "Shyamwati Sharma v. Karam Singh" : (2010) 12 SCC378**

Dearness allowance and house rent allowance should be included for computation of income of the deceased. HRA, CCA and Medical Allowance along with EPF and GIS. **2011 AIR SCW 2811 "Sunil Sharma v. Bachitar Singh"**

Victim working as carpenter - Income per day would be Rs. 100/- - Accident taking place when his age was 40 yrs. - Considering his age and age of his wife proper multiplier would be 17. **2009 AIR SCW 6746 "National Insurance Co. Ltd. v. Khimlibai"**

The calculation of the award has to be done taking the net income and not the gross income **New India Assurance Company Vs. Charlie & others 2005 AIRSCW 1801 : 2005 (2) PLJR 249 (SC)** see also **Yerramma and Ors. v. G. Krishnamurthy and Anr. AIR 2015 SUPREME COURT 1145**

The net income will include amount paid towards LIC, Society charges, House rent along with and D.A. as they are perks beneficial for the family. **National Insurance Company Vs. Indira Srivastava 2008 AIR SCW 143**

The Compensation on multiplier basis must be a **just compensation** and it should neither be a bonanza nor a source of profit Divisional Controller **KSRTC Vs. Mahadev Shetty (2003) 7 SCC 197. New India Assurance Company Vs. Charlie 2005 (2) PLJR 249 (SC) (2005) 10 SCC 720. See also Syed Basheer Ahamed and others Vs. Md. Jameel and another 2009 AIR SCW 493 AIR 2009 SUPREME COURT**



Provident Fund, family pension, cash balance, etc. cannot be termed as "pecuniary advantage" **Helen Rebello vs. Maharashtra State Road Transport Corporation . (1999) 1 SCC 90**

Deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death. **SEBASTIANI LAKRA & ORS VERSUS NATIONAL INSURANCE COMPANY LTD. & ANR. AIR 2018 (SC) 5034; 2019 (1) BLJ 24 (SC)**

What would, however, be a just and reasonable compensation depends upon the fact-situation obtaining in each case. No hard and fast rule therefore can be laid down. The Court must also bear in mind that compensation should not be treated to be windfall. **"Oriental Insurance Co. Ltd. v. Deo Patodi" AIR 2009 SUPREME COURT 2442**

Motor Vehicles Act (59 of 1988), S.168 - MOTOR VEHICLES - Motor accident compensation - Computation - Claimant aged 38 years was working as carpenter and earning Rs. 4,500/- - As result of accident he became permanently disabled and lost his earning capacity - Minimum compensation payable to him - Should be considered from suffering of disability undergone by him - Selection of multiplier of '15' - Held, proper in facts and circumstances of case - Multiplier specified in Sch. II - Alteration - Strong reasons should exist. **AIR 2007 SUPREME COURT 3141 "Chief Law Officer, A. P. S. R. T. C. v. M. Pentaiah Chary"**

Amount of income-tax as was applicable should be deducted from his gross salary as he was no longer in service. **AIR 2009 SUPREME COURT 1831 "Oriental Insurance Co. Ltd. v. Ram Prasad Varma"**

For computing loss of future income - Disability assessed by doctor of left arm ought to be considered - And not disability assessed of whole body. **AIR 2011 SUPREME COURT 1785 "Nagarajappa v. Divisional Manager, Oriental Insurance Co. Ltd." See also AIR 2011 SUPREME COURT 1897 "C. Mohanraju v. Divisional Manager, United India Assurance Co. Ltd."**

The various elements of compensation are enumerated as under in cases of disability

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)" **KAJAL VERSUS JAGDISH CHAND & ORS 2020 0 Supreme(SC) 110** see also **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343** see also **AIR 2012 SUPREME COURT 361 "Ram Kiran Goyal v. Sub-Divisional Engineer"** ; **AIR 2012 SUPREME COURT 459 "Sanjay Batham v. Munnalal Parihar : (2012) 1 SCC (Cri) 64 : (2011) 10 SCC 665** ; " **AIR 2012 SUPREME COURT 534 "Ibrahim v. Raju"** ; **Govind Yadav Vs. New India Assurance Company (2012) 1 SCC (Cri) 82 : (2011) 10 SCC 683** ; **AIR 2012 SUPREME COURT 2893 "Kavita v. Deepak"**

Where Doctor assessed disability suffered by claimant at 75% and nothing adverse to interest of claimant was elicited though Doctor was cross-examined at length by Insurance Company, it was held that taking 50% disability into account while calculating loss of income was not proper and loss of earning capacity of claimant was calculated to be Rs. 6,12,000/- by taking disability suffered by claimant at 75%. **D. Sampath v. United India Insurance Co. Ltd." AIR 2012 SUPREME COURT 544 "**

In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller. **AIR 2012 SUPREME COURT 782 "Mohan Soni v. Ram Avtar Tomar" (2012)2SCC267, see also AIR 2014 SC (Supp) 22 "V. Mekala Vs. M. Malathi"**

### **ARBITRATION**

Arbitration clause not available to the insured after payment made in full and final settlement and acceptance of insurance claim. **New India Assurance Company Ltd. vs. Anand Electricals (1995) 2 BLJR 975.**

### **AWARD**

Compensation should be awarded on the basis of the principles contained in the Second Schedule to the Act **2011 AIR SCW 2685 "Sant Singh v. Sukhdev Singh"**

Court must take a realistic view - Particular claim possible on material on record - Should not be denied on hyper technical pleas. Claim for compensation in respect of vehicle - Value put on vehicle at time of renewal of policy - Cannot be disowned by Insurance Company on one pretext or the other - Claimant cannot be asked to produce evidence to prove that surveyors report was on lower side. **AIR 2009 SC (Supp) 1377 "Dharmendra Goel v. Oriental Insurance Co. Ltd."**

A decision that a claim application is not maintainable is an award **Gariapati Veeraya vs. N. S. Choudhary AIR 1957 SC 540.**

Award of compensation must be just and reasonable and it generally means that the sum awarded has to be actually paid by the insurer **Bihar Co operative Motor Vehicle Insurance Society vs. Rameshwar Raut AIR 1970 Pat 172**

Amount paid for the maintainability of the appeal has to adjusted from the award under challenge **United India Insurance Company Ltd. Vs. Manju Devi 1998 (3) PLJR 506.**

An Execution Court cannot modify an award; only it has to see that the award is executed in toto. **State of Punjab Vs. Krishna Dayal Sharma AIR 1990 Supreme Court 2177.**

Award under Section 140 of the Motor Vehicles Act, 1988 is interim in nature and an interim compensation **New India Assurance Company Vs. Yasoda Devi (1996) 2 BLJR 1000**

An award of the Motor Vehicles Claims Tribunal doesnot have a force of a decree though the award is recoverable as land revenue **New India Assurance Company Vs. Renu Devi 1999 (2) PLJR 640.**

In cases of injuries which has not laid to permanent disability. The compensation is to be awarded on a lump-sum basis. **New India Assurance Company VS Jainath Singh 2000 (2) PLJR 776**

An award granting lump some compensation cannot be modified on the assumption that the victim was going to be selected in government service as the number of post and number application was same .**Chandeshwari Prasad Vs. Oriental Insurance Company 2001 (2) PLJR 675.**

Award of compensation–Long term fixed deposit of amount of compensation is mandatory only in case of minors, illiterate claimants and widows–In case of literate persons, it is not mandatory to invest amount of compensation in long term fixed deposits–Sufficient discretion has been given to Tribunal not to insist on investment of compensation amount in long term fixed deposit and to release even who amount in case of literate persons– **A.V. Padma Vs. R. Venugopal [2012] 3 SCC 378/**

### **BORROWER OF VEHICLE**

Borrower of the vehicle is not a third party as he steps in the shoes of the owners **Ninagamma Vs. United India Insurance Company 2009 AIRSCW 4916 : AIR 2009 SC 3056 : (2009) 13 SCC 710 see also HDFC Bank Ltd. Vs. Kumari Reshma 2015 0 AIR(SC) 290; 2015 2 JLJR(SC) 9; 2015 2 PLJR(SC) 283**

### **CIVIL PROCEDURE CODE**

Claims tribunals are a civil court for purpose of S. 25, Civil P.C. Supreme Court can transfer claim case from one tribunal to another. **Bhagwati devi v. M/s. I.S. Goel. 1983 ACJ 123: 1983 TAC 332 (SC).**

A Claim petition – Amendment- Order 6 Rule 17 of the Code Of Civil Procedure--- Permanent disability to the extent of 50% discovered after filing the original claim -- amendment-seeking enhancement of original claim should be allowed. **Anna Kaman Jain v. Union of India. AIR 1986 SC 1125: (1986) 2 SCC 275: (1985) 9 Delhi Rep J 217. See also Nagappa Vs. Gurudayal Singh 2002 AIR SCW 5348: (2003) 2 SCC 274**

Amendment of written statement necessitated after detecting the manipulation in the cover note. The authenticity and genuineness of the cover note has to be tested by the Trial Court amendment seeking correction of written statement rightly allowed. **Amit Singh @ Ajit Singh Vs. Ful Kumari Kuer 2019 (1) BLJ 178**

Normally it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res

ipsa loquitur. **Pusshpabai Pashottam Udeshi v. M/s. Ranjit Ginning and Pressing Co. Pvt. Ltd. AIR 1977 SC 1735 : (1977) 2 SCC 745 : (1977) 2 SCWR 174 : (1977) 2 SCJ 442.**

High Court decision holding pauper provisions in O.33. CPC applicable to proceedings before Claims Tribunal -- Decision affirmed and special leave to appeal refused. See constitution of India, Art. 136. **AIR 1979 SC 855.**

High court is a first appellate Court, it was the duty of the High Court to have decided the appeal keeping in view the powers conferred on it by the statute. The impugned judgment also does not, in our opinion, satisfy the requirements of Order XX Rule 4 (2) read with Order XLI Rule 31 of the Code which requires that judgment shall contain a concise statement of the case, points for determination, decisions thereon and the reason **U.P.S.R.T.C.Vs. Mamta and Ors. MANU/SC/0185/2016**

The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of Section 169 and the rules. Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. The whole object of summary procedure is to ensure that claim application is heard and decided by the Claims Tribunal expeditiously. The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application **Bimlesh and Ors v. New India Assurance Co. Ltd AIR 2010 SUPREME COURT 2591**

### **CALCULATION**

The High Court relied upon the driving licence of the deceased and the training certificate of the deceased issued by Bajaj Auto Limited and determined the notional income Deceased at the time of accident at Rs.10,000/- per month. Neither the driving licence nor the certificate could per se be made the basis to assume or infer that the deceased was gainfully employed at the relevant time and more so was earning income of Rs.10,000/- per month., the reason assigned by the High Court for enhancing the notional income of the deceased from Rs. 3000/- to Rs.10,000/- per month is irrational and tenuous. No tangible logic has been assigned to discard the just finding recorded by the Tribunal in the backdrop of lack of evidence regarding the monthly income of the deceased **Rani & Ors. Versus National Insurance Company Ltd. & Ors. 2018 0 Supreme (SC) 746;**

### **CHILD**

Age of the Child- 12 years, annual income to be considered as Rs.15,000/- and multiplier of 20 is to given, and Rs.50,000/- towards traditional head and the total awarded amount is to be Rs.3,50,000/- **Lal Babu Prasad @ Lal Bahadur Prasad Vs. Jai Prakash 2018 (1) BLJ 122 (PHC) see also Babloo Dubey Vs. Nagendra Thakur and Anr MA-324/2016 DISPOSED 19-Feb-2019 2019 (4) BLJ 772**

Claim can be raised for the death of the unborn child **National Insurance Company Vs. Kusum & others (2011) 13 SCC 306 : (2012) 1 SCC (Cri) 859 : 2012 AIR SCW 266 .**

That in case of death of children the compensation will not be more than Rs.50,000/- The **Oriental Insurance Co.Ltd. vs. Hema Dutta 1999 (3) PLJR 119.**

By the passage of time the awarded amount has been increased by Rs,80,000/- considering the future prospect of the minor, standard and status of the family in the society and the upbringing of the minor by the parents. **M/s Oriental Insurance Company Vs. Viveka Nand Singh 2001 (4) PLJR 510**

Further on the death of a 13-year-old child the lump sum compensation is awarded at **Rs1,00,000/- Rajnath Singh Vs. Atul Kumar Sharma 2002 (2) PLJR 767.**

The supreme Court in case of minors has further increased the award and has directed to take the notional income of Rs15,000 for minors and give a multiplier of 15 **Manju Devi Vs. Musafir Paswan 2003 (2) PLJR 120 (SC) see also AIR 2009 SUPREME COURT 2506 "R. K. Malik v. Kiran Pal"**

Claimant child had suffered 10% disability - Loss of future earning - Could not be decided on any legal principle - Compensation granted on basis of notional income - Plea that notional income should be calculated on basis that claimant would have earned Rs. 4,000/-per month - Not tenable - Compensation of Rs. 1,20,000/- granted by High Court held was adequate even as per structural formula. **AIR 2010 SUPREME COURT 40 "Priya Vasant Kalgutkar v. Murad Shaikh"See also AIR 2009 SC (Supp) 179 "Asraf Alli v. M/s. Naveen Hotel Ltd."**

Claim for compensation -Compensation to be awarded must be 'just' - Should not be bonanza -**Death of child of 9 years -Rs. 1,80,000/ awarded as compensation. AIR 2007 SUPREME COURT 324 "New India Assurance Co. Ltd. v. Satender" see also AIR 2009 SC (Supp) 759 "Harijan Mangri Siddakka v. Oriental Insurance Co. Ltd."**

Child of 8 years injured in accident - Suffering severe injury in leg - Leading to permanent disability - Considering sufferings undergone by injured child - And deprivation of better prospects in life suffered because of disability - Child held entitled to Rs. 4 lacs as compensation. **AIR 2014 SC (Supp) 597 "Kum Michael Vs. Regional Manager, Oriental Insurance Co. Ltd."**

The children together are entitled to compensation of Rs. 1,00,000/- towards loss of love, care, guidance and protection. **Bhogireddi Varalakshmi and Ors.Vs.: Mani Muthupandi and Ors. MANU/SC/0227/2017 : 2017 0 Supreme(SC) 211; ( no more a good law as per National Insurance Company Vs. Pranay Sethi AIR 2017 SUPREME COURT 5157)**

We are also of the view that the High Court has erred in granting Rs. 50,000/- as loss of love and affection to each of the claimants. **New India Assurance Co. Ltd. Versus Vinish Jain & Ors. 2018 0 Supreme(SC) 168;**

### **COMPASSIONATE APPOINTMENT**

Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. **AIR 2013 SUPREME COURT 3830 "Vimal Kanwar v. Kishore Dan"**

The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tort feisor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tort feisor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/ the driver of the offending vehicle or the insurer. **National Insurance**

**Co. Ltd. Versus Rekhaben & Ors. AIR 2017 SUPREME COURT 2580 : 2017 0 Supreme(SC) 446; SEE ALSO Rajasthan State Road Transport Corporation Versus Danish Khan AIR 2019 (SC) 4954**

### **CONTRIBUTORY NEGLIGENCE**

Where the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle **MOHAMMED SIDDIQUE & ANR. –Versus NATIONAL INSURANCE COMPANY LTD. & ORS. – 2020 0 Supreme(SC) 38 CIVIL APPEAL No.79 OF 2020 (arising out of Special Leave Petition (C) No.9618 of 2018)Decided On : 08-01-2020**

There was no justification for the MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. **Jumani Begam Versus Ram Narayan & Ors 2019 0 Supreme(SC) 1404**

The question of contributory negligence would arise when both parties are involved in the accident due to rash and negligent driving. **Nishan Singh & Others .Versus Oriental Insurance Company Ltd. Through Regional Manager & Others AIR 2018 (SC) 2118**

A case of contributory negligence arises when an accident occurs not only owing to a negligent act on the part of the driver of the concerned vehicle, the owner and insurer in respect whereof become liable for payment of compensation, but also owing to facts of negligence on the part of the victims thereof meaning thereby if the deceased or the driver of the vehicle wherein he was travelling was also negligent to a certain extent as a result whereof the accident occurred **ORIENTAL FIRE AND GENL. INS. CO. LTD. Vs. SUDHA DEVI AND OTHERS (1991) ACJ 4**

To prove the contributory negligence, there must be cogent evidence In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied"**Meera Devi Vs. H. R. T. C AIR 2014 SC (Supp) 1881 " [2014] 2 Supreme 462 / [2014] 4 SCC 511 see also G. DHANASEKAR Vs. M.D., METROPOLITAN TRANSPORT CORPORATION LIMITED [2014] 0 Supreme(SC) 52685 [2014] 3 JT 146 / [2014] 2 JCR(SC) 251**

It is settled principle of law that in the case of contributory negligence, owner, insurer and driver are necessary parties in the claim case. It appears from FIR (Ext. 1) and the charge-sheet also that there is allegation of contributory negligence against both the vehicles i.e. maruti van and commander jeep. After investigation charge-sheet has also been filed and it has been found that both the drivers were negligent in driving the vehicles. Considering all these materials, it appears that owner and insurer of Maruti van are the necessary parties who should be impleaded as opposite parties before the learned Tribunal. Neither the claimants have added them as parties nor any direction has been given by the learned Tribunal to implead them as parties for just decision of the claim case. **[2014] 1 BBCJ 430 National Insurance Company Gaya Vs. Lily Hembrum**

Accident between two buses - Claimant bus driver on right side of road - Other bus was partly on wrong side - Collision, however, was head-on - Claimant thus was not diligent, as he neither slowed down bus nor swerved to his left, on seeing oncoming bus - Claimant was partly responsible for accident - Responsibility fixed at 25% on claimant and 75% on driver of other bus - **AIR 2008 SC (Supp) 1646 "T. O. Antony v. Karvarnan"**

Contributory negligence - Proof - Accident between truck and bus - Spot memo showed that left side of truck collided with right side of bus - F.I.R., inspection report and oral evidence clearly established that it was truck driven by appellant which had come in rash and negligent manner from behind - Accident was not caused on account of rash and negligent driving of bus - Appellant would be liable to pay amount of

compensation. **2009 AIR SCW 5425 "Vijay Kumar Kulhar v. Rajasthan State Road Transport Corpn."**

The bus hit the lamp post, injury to the Claimant doesnot show that he had not put his hand out side the bus thus it is not a case of contributory negligence **G. Gnanam Alias Gnanamoorthy Vs. Metropolitan Transport Corporation 2009 AIRSCW 407**

Collusion between car and truck evidence shows that the truck was being driven at a high speed and the car was on its own side, no evidence that there was any failure on the part of the car driver. It is not a case of Contributory negligence **Usha Rajkhowa and others Vs. M/S Paramount Industries and others 2009 AIR SCW 1576**

Motorcycle driven by two persons sitting on the rear seat. Mere this fact cannot lead to inference that there was negligence on the part of the motor cyclist only. Insurance Company can get benefit when conditions mentioned in section 149 (2) of the Motor Vehicle Act, 1988 is violated **New India Assurance Company Ltd. vs. Savitri Devi (1996) 1 BLJR 519: 1996 (1) ALLPLR 476.**

Negligence of the bus driver not in dispute proportion of the negligence will be of the ratio of 60% and 40% **Karnataka State Road Transport Corporation vs. K.V.Sakeena (1996) 3 SCC 446.**

Contributory negligence, negligence can be apportioned as 60% and 40%. Accordingly insurer liable to pay compensation of Rs.60,000. **Indrani Raja Durai & others vs. Madras Motor & General Insurance Company and Others (1996) 2 SCC 157.**

When composite negligence is there and when there is no scope of determination as to which of the vehicle was more liable than the ratio of liability is to be fixed at 50% each. **National Insurance Company vs. Malti Devi & others (1996) 2 BLJR 1239**

seeing the road conditions of Bihar award for death falling from the roof of bus reduced by 30% **United India Insurance Co.Ltd. vs. Most. Nirmala Devi 2000 (4) PLJR 45 : 2000 BRLJ 30**

Traveling on the roof of the bus amounts to contributory negligence **The New India Assurance Company Vs. Most. Gagar Devi 2000 (3) PLJR 684**

In case of collusion between two vehicle due to negligence of drivers of both vehicles entire responsibility cannot be thrust on any one driver of one vehicle if the owner and Insurer of the other vehicle if exonerated should be added as party and the award liability is to be fixed 50% each on both the vehicles **Bijoy Kumar Dugar Vs. Bidyadhar Dutta 2006 (2)PLJR 287 see also United India Insurance Company Limited Vs. Shila Devi 1997 (1) PLJR 271.**

## **CONSORTIUM**

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in **National Insurance Company Vs. Pranay Sethi AIR 2017 SUPREME COURT 5157**

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium. **Magma General Insurance Co. Ltd. Versus Nanu Ram Alias Chuhru Ram & Ors. 2019 1 Supreme 262; 2018**

## CONTRIBUTORY NEGLIGENCE AND NEGLIGENCE

There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons **Khenyei Vs. New India Assurance Co. Ltd. and Ors AIR 2015 SC 2261**

It would be open to the claimants to recover the entire amount from any of the Respondents, that is from owner, driver and insurer of the Maruti car or Respondent No. 4, driver of the tempo as their liability is joint and several with respect to claimants. It would be open to the Respondents to settle their *inter se* liability **Kamlesh and Ors. Vs. Attar Singh and Ors. 2016 (1)J.L.J.R.36, 2016(1)PLJR187,**

Composite negligence' refers to negligence on part of two or more persons. Where a person is injured as a result of negligence on part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. **AIR 2008 SC (Supp) 1646 "T. O. Antony v. Karvarnan" 2008 AIR SCW 2045 : (2008) 3 SCC 748 SEE ALSO Andhra Pradesh State Road Transport Corporation and Anr. v. K. Hemlatha and Ors. [MANU/SC/2753/2008 : 2008 (6) SCC 767].**

Where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error." **AIR 2014 SC (Supp) 1922 "Pawan Kumar Vs. M/s. Harkishan Dass Mohan Lal"**

## COURT

Motor Accident Claims Tribunal is a court with a limited jurisdiction and not merely a Tribunal and all persons, who are qualified for appointment as District Judge and Addl. Dist. Judges are qualified for appointment as members of the Tribunal and subordinate as well as under the control of the High Court **Anirudh Prasad Ambastha and others vs. State Of Bihar AIR1990 Pat 49 (FB).**

## CLAIMANT

Society in which the deceased lived may also be claimants, if it proves its dependence on the deceased **MONTFORD BROTHERS OF ST.GABRIEL Vs. UNITED INDIA INSURANCE [2014] 3 SCC 394 / [2014] 2 JCR (SC) 199 / [2014] 1 Supreme 377**

Entitlement to compensation - Married daughter of deceased - Though not dependant on deceased is entitled to compensation - She is 'legal representative' under S. 166. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate **Manjuri Bera v. Oriental Insurance Co. Ltd. AIR 2007 S. C. 1474 : (2007) 10 SCC 643**

In case the mother is the claimant while passing an award the age of the mother is to be taken consideration while considering the award. **Oriental Insurance Company vs. Shaji Devi and others 1999 (1) PLJR 872;**



**H.S. Ahammed Hussain vs. Irfan Ahammed and Others 2002 AIR SCW 2788.**

In case where the deceased has died without leaving behind any direct dependent Claimant the brother/ sister can raise a claim for compensation on account of loss of consortium, shock, funeral expenses and a lump some compensation only **Pappu Mehtar vs. Subash Pd. Yadav 2001 (2) PLJR 500.**

If the parents are the claimants it is not the age of deceased alone but the age of the claimants as well are the relevant factors **Municipal Corporation Of Greater Bombay Vs. Laxman Iyer 2003 AIR SCW 5505 : AIR 2003 SC 4182: (2003) 8 SCC 731 : Bijoy Kumar Dugar Vs. Bidyadhar Dutta & others 2006AIR SCW 1116**

### **CLAIM PETITION**

The claimants are merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. The standard of proof beyond reasonable doubt could not have been applied. **Sunita And Others Versus Rajasthan State Road Transport Corporation And Another AIR 2019 SUPREME COURT 994 : 2019 0 Supreme(SC) 161**

The deceased was the victim of his own action of rash and negligent driving. A Claimant, , cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LR's of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act. **NATIONAL INSURANCE CO. LTD. VERSUS ASHALATA BHOWMIK AND ORS. AIR 2018 SC 4133 : 2018 0 Supreme (SC) 858; see also United India Insurance Company Ltd Versus Sumitra Devi M. A. No.674 of 2013 disposed of on 29-01-2019 ; United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

Once the Claimants approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. **AIR 2012 SUPREME COURT 1918 "Surinder Kumar Arora v. Manoj Bisla"**

If Claimants proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependents to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle." **AIR 2012 SUPREME COURT 1918 "Surinder Kumar Arora v. Manoj Bisla"**

Claim is made under section 166 of the Motor Vehicles Act, the principles for determining compensation as per Section 163-A can be used as a guide. Thus, the Second Schedule can be used as a reference for determining compensation in a claim under Section 166 of the Act. **2011 AIR SCW 2685 "Sant Singh v. Sukhdev Singh"**

No fault compensation - Claim for - Does not get lost if not raised in beginning of claim proceedings - S.140 though appears harsh to owner/insurer of motor vehicles - Is not arbitrary and unreasonable. **2010 AIR SCW 4918 "Eshwarappa v. C. S. Gurushanthappa"** see also **Nishan Singh & Others – Appellant(s) Versus Oriental Insurance Company Ltd. Through Regional Manager & Others AIR 2018 (SC) 2118**

Rejection of claim against insurance company without examining causal connection between cause of death

and use of vehicle is bad **AIR 2009 SC (Supp) 759 "Harijan Mangri Siddakka v. Oriental Insurance Co. Ltd."**

Victim of accident himself at fault and cause of accident does not deprive him from no fault compensation - Claim made on fault basis getting rejected - Order directing insurance company to recover from claimants amount paid on no fault basis is not proper. **AIR 2010 SUPREME COURT 2913 "Indra Devi v. Bagada Ram"**

No fault compensation - Claim for - Does not get lost if not raised in beginning of claim proceedings **AIR 2010 SUPREME COURT 2907 "Eshwarappa v. C.S. Gurushanthappa"**

Claim for compensation - Claimants have option either to proceed under S.166 or S. 163A. **AIR 2007 SUPREME COURT 1609 "Oriental Insurance Co. Ltd. v. Meena Variyal" = 2007 AIR SCW 2362**

Claim for compensation - Remedy under Ss. 163A and S. 166 being final and independent of each other, claimant cannot pursue them simultaneously - Claim petition finally determined under S. 163A - Claimant would be precluded from proceeding further with petition filed under S. 166. **AIR 2011 SUPREME COURT 1138 "Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadhvi"**

The Claim petition has to be filed under section 166 of the Motor Vehicles Act, 1988, a direct application under section 140 is not **maintainable Oriental Insurance Company vs. Chulchul Devi 1999 (1) PLJR 747; Oriental Insurance Company vs. Guljari 1999(1) PLJR 872**

A no fault claim can be made under section 140 of the Motor Vehicles Act, 1988 can be made without filing a petition under section 166 of the Motor Vehicles Act, 1988 **New India Assurance Company Vs. Faida Hussain 2001 (4) PLJR 557** This judgment holds no good now as per the decision of the Supreme Court in **Deepal Girishbhai Soni and others Vs. United India Insurance Company 2004 AIR SCW 1864: (2004) 5 SCC 385**

The Scheme of the provisions under section 163 A and 166 of the Motor Vehicles Act, 1988 are distinct and separate in nature. **Deepal Girishbhai Soni and others Vs. United India Insurance Company 2004 AIR SCW 1864**

A no fault claim can be made under section 163 A of the Motor Vehicles Act, 1988 can be made without filing a petition under section 166 of the Motor Vehicles Act, 1988 **Deepal Girishbhai Soni and others Vs. United India Insurance Company 2004 AIR SCW 1864**

Both Sections i.e. Sections 140 and 163A are based on the concept of 'no fault liability' and have been enacted as measures of social security. It was further noted that in a proceeding under Section 163A of the Act the Tribunal may be required to adjudicate upon various disputed questions like age, income, etc. unlike in a proceeding under Section 140 of the Act.

Compensation under Section 140 of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim. **United India Insurance Co. Ltd. Versus Sunil Kumar & Anr. AIR 2017 (SC) 5710; 2017 0 Supreme(SC) 1121; see also SHIVAJI AND ANR.VERSUS DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD. AND ORS. 2018 0 Supreme(SC) 796;**

A claim petition for compensation for the killing of the driver by miscreants is maintainable as it is covered under the definition of accident under the Motor Vehicles Act, 1988 **Rita Devi Vs. New India Assurance Company (2000) 5 SCC 113 : 2001 (1) PLJR 30 (SC)** See also **National Insurance Company Vs. Sindhu Devi 2001 (1) PLJR 534; Oriental Insurance Company Vs. Archana Ranjan 2001(1) PLJR 163.(D.B)**

### **COMPENSATION OF VICTIMS OF MOTOR VEHICLE ACCIDENT**

The M.V. Act is a beneficial legislation, the primary objective being to provide a statutory scheme for compensation of victims of motor vehicle accidents; or, their family members who are rendered helpless and disadvantaged by the untimely death or injuries caused to a member of the family, if the claim is found to be genuine [The New India Assurance Co. Ltd. vs. C. Padma and Ors. [\(2003\) 7 SCC 713](#); Deepal Girishbhai Soni and Ors. v. United India Insurance Co. Ltd. [\(2004\) 5 SCC 385](#)]. The Act provides a summary procedure for claiming compensation for the loss sustained in an accident, which is otherwise applicable to suits and other proceedings while prosecuting a claim before a civil court. [Vimla Devi and Ors. vs. National Insurance Company Limited and Ors. [\(2019\) 2 SCC 186](#)] see also **The State Of Arunachal Pradesh Ramchandra Rabidas @ Ratan Rabidas & Anr. 2019 0 Supreme(SC) 1132; AIR 2019 (SC) 4954**

### **CRIMINAL CASE AND MOTOR VEHICLE ACCIDENT**

Principles of proof in criminal case are not attracted **AIR 2011 SUPREME COURT 1504 "Parmeshwari v. Amir Chand"**

**Accident claim** - Strict principles of proof in criminal case, not attracted **Sunita and Ors. v. Rajasthan State Road Transport Corporation and Anr AIR 2019 SUPREME COURT 994**

, There is no bar under the M.V. Act or otherwise, to try and prosecute offences under the IPC for an offence relating to motor vehicle accidents. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

Offences under Chapter XIII of the MV Act are compoundable in nature in view of Section 208(3) of the MV Act, whereas offences under Section 279, 304 Part II and 304A IPC are not.

If the IPC gives way to the MV Act, and the provisions of CrPC succumb to the provisions of the MV Act as held by the High Court, then even cases of culpable homicide not amounting to murder, causing death, or grievous hurt, or simple hurt by rash and negligent driving, would become compoundable. Such an interpretation would have the consequence of letting an offender get away with a fine by pleading guilty, without having to face any prosecution for the offence committed. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

### **DEDUCTIONS**

Deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident.. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the

deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death. **SEBASTIANI LAKRA & ORS VERSUS NATIONAL INSURANCE COMPANY LTD. & ANR. AIR 2018 (SC) 5034; 2019 (1) BLJ 24 (SC)**

### **DETERMINATION OF COMPENSATION**

Where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six. **Smt. Sarla Verma and Ors v. Delhi Transport Corporation and Anr AIR 2009 SUPREME COURT 3104**

Multiplier and deduction on account of personal and living expenses – Applicable deduction on account of personal and living expenses in case of **bachelors – Normally 50%** – No reason to deviate – Addition to income towards future prospects in case of self-employed below 40 years of age – Normally 50% – Multiplier, in the case of the age of the deceased between 26 to 30 years is taken as 17 **Munna Lal Jain Vs. Vipin Kumar Sharma (2015)6SCC347**

Award of compensation without considering price-index prevailing at moment - Suffers from improper assessment of compensation awarded by Tribunal and High Court on conventional heads, i.e. 'loss of consortium' to the spouse, 'future prospects of deceased **AIR 2014 SC (Supp) 275 "Smt. Savita Vs. Bindar Singh"**

Accident compensation - Determination - Foreign Exchange rate to be applied - Victim of accident earning in foreign currency - Claim made by dependents in Indian currency - Exchange rate as prevalent on date claim petition was filed has to be applied. **AIR 2013 SUPREME COURT 2293 "Jiju Kuruvila v. Kunjamma Mohan"**

Determination - Losses and gains arising to claimant out of accidental death of victim - Ought to be balanced - Claimant, wife of victim given compassionate appointment - Non-Consideration of this benefit in assessing compensation - Improper **Bhakra Beas Management Board v. Kanta Aggarwal" AIR 2008 SUPREME COURT 3118"**

The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death that is, the balance of loss and gain to a dependant by the death must be ascertained.

The balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the plaintiffs to establish the extent of their loss. When the courts below have, on relevant material placed before them, ascertained the said amount as damages the Supreme Court cannot in second appeal disturb the said finding except for compelling reasons. **"Gobald Motor Service Ltd. v. R. M. K. Veluswami" (3 judges) AIR 1962 SUPREME COURT 1**

Refusal to award any amount towards loss of future earning in injury cases is not proper **AIR 2010 SUPREME COURT 3741 "Yadava Kumar v. Divisional Manager, National Insurance Co. Ltd."**

Victim a housewife, services rendered by her is invaluable and it cannot be compared with service rendered by house-keeper/servant - Compensation to be paid by applying criteria in Cl.6 of Sch.2 and applying appropriate multiplier. **AIR 2010 SUPREME COURT 3426 "Arun Kumar Agrawal v. National**

## **Insurance Co. Ltd."**

Determination - Claimant was paralysed due to head injury in accident - Owned agricultural lands - But there is no convincing evidence to prove the income out of that - That apart, since he owned the land it cannot be said that there is total loss of income due to injury suffered by him - Thus calculation of amount of compensation on basis of notional income - Not liable to be interfered with. **AIR 2008 SUPREME COURT 2014 "Ponnumany v. V.A. Mohanan"** see also **AIR 2011 SUPREME COURT 2572 "Rudra v. Divisional Manager, National Insurance Co. Ltd."**

Compensation - Determination - Salary of deceased not revised with retrospective effect on date of death of deceased - Only because such salary was revised at a later point of time, same by itself would not have been factor which could have been taken into consideration for determining amount of compensation - What would have been income of deceased on date of retirement was not relevant factor. **AIR 2008 SUPREME COURT 1734 "Oriental Insurance Company Ltd. v. Jashuben"**

Multiplier - Choice of - Deceased aged 35 years at time of death - None of claimants above that age - Multiplier applicable as per Sch.2 would be 16 - However considering fact that claimant would get only 6% interest - And also fact that increase has been made in notional income of deceased - Proper multiplier held, would be 14. **AIR 2008 SUPREME COURT 1858 "Laxmi Devi v. Mohammad Tabbar": (2008) 12 SCC 165**

The Compensation on multiplier basis must be a **just compensation** and it should neither be a bonanza nor a source of profit **Syed Basheer Ahmed Vs. Md. Jameel (2009) 2 SCC 225** see also **Divisional Controller KSRTC Vs. Mahadev Shetty (2003) 7 SCC 197. New India Assurance Company Vs. Charlie 2005 (2) PLJR 249 (SC) (2005) 10 SCC 720 ; New India Assurance Company Vs. Yogesh Devi (2012) 3 SCC 613 : (2012) 2 SCC (cri) 215: AIR 2012 SUPREME COURT 945 .**

There is no fixed Rule thus Compensation must be based on certain data , establishing reasonable nexus between loss incurred and compensation **Syed Basheer Ahmed Vs. Md. Jameel (2009) 2 SCC 225**

General Rule to deduct half in case of bachelor and 1/3 in case of married person. **Syed Basheer Ahmed Vs. Md. Jameel (2009) 2 SCC 225**

Family of victim consisting only of his father and mother - Deduction of personal expenses - 50% is to be made **2012 AIR SCW 3901 "Amrit Shali v. National Insurance Co. Ltd."**

Deduction towards personal expenses - Victim bachelor - Deduction of 50% should be made from his income. **AIR 2014 SC (Supp) 1004 "M. Mansoor Vs. United India Insurance Co. Ltd"**

Principles of proof in criminal case are not attracted **AIR 2011 SUPREME COURT 1504 "Parmeshwari v. Amir Chand"**

**Accident claim** - Strict principles of proof in criminal case, not attracted **Sunita and Ors. v. Rajasthan State Road Transport Corporation and Anr AIR 2019 SUPREME COURT 994**

For computing loss of future income - Disability assessed by doctor of left arm ought to be considered - And not disability assessed of whole body. **AIR 2011 SUPREME COURT 1785 "Nagarajappa v. Divisional Manager, Oriental Insurance Co. Ltd."**

**No reliable document** having been produced to show that the deceased was earning an income of Rs. 12,500/- per month, as claimed. The High Court, in our opinion, cannot be held to have, thus, committed any

grave error in this behalf. There is no dispute as regards application of the multiplier. In a case of this nature, some guess work is inevitable. This Court could have gone into the question provided there was some material had been brought on record by the appellants upon which reliance could be placed. There being no such material available on record, we are not in a position to interfere with the impugned judgment of the High Court. **AIR 2008 SUPREME COURT 1256 "V. Subbulakshmi v. S. Lakshmi"**

### **DRIVING LICENCE**

Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle -that **the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence**. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle. **PAPPU AND ORS. Versus VINOD KUMAR LAMBA AND ANR. AIR 2018 SUPREME COURT 592 :2018 0 Supreme (SC) 42**

Tribunal recorded finding that the driver did not possess valid Driving Licence on the date of the accident and fixed the liability of payment on the insurance company is wrong and liability will be borne by the owner of the vehicle. **D.M.. National Insurance Co.Ltd. Vs. Rebi Devi 2012 (4) PLJR 993.**

Driving without licence - Minor driving motorcycle - Hit a scooter - Liability to pay compensation shifts on owner of motorcycle - Since it was duty of owner to ensure that his motorcycle was not misused - Defence by owner that keys of motorcycle were taken by minor without his knowledge held, not probable. **AIR 2011 SUPREME COURT 2436 "Jawahar Singh v. Bala Jain"**

Driver of offending tractor did not have valid driving licence on date of accident i.e. 27-1-1996, his licence had already expired - His licence was renewed only on and from 7-2-1996 - And not within 30 days from date of expiry thereof as provided by proviso to S.15(1) - Renewal of licence would not take effect from retrospective date - But from date of its renewal - Breach of contract of insurance is thus established - Insurer is not liable to indemnify insured. **AIR 2009 SC (Supp) 1264 "Ram Babu Tiwari v. United India Insurance Co. Ltd."**

As on 5-01-2001 the appellant was not duly licensed as his learner's licence expired on 22-12-2000. He filed an application for grant of licence much later. Insurance Company, was not bound to reimburse him in terms of the Contract of Insurance. **2009 AIR SCW 2865 "Bhuvan Singh v. M/s. Oriental Insurance Co. Ltd."**

Liability of insurer - Car accident resulting in death of driver - Driving licence of deceased driver had expired four months prior to date of accident - Claimant not claiming that driver had applied for renewal of licence within 30 days - Since deceased had no valid and effective driving licence on date of accident, insurer is not liable to indemnify claimant for loss. **AIR 2009 SUPREME COURT 2987 : 2009 AIR SCW 4801 "New India Assurance Co. Ltd. v. Suresh Chandra Aggarwal"**

Vehicle driven by minor at time of accident - Insurance company gets absolved of its liability -**AIR 2009 SUPREME COURT 24 "United India Insurance Co. Ltd. v. Rakesh Kumar Arora"**

No finding of fact arrived at that claimant was driving two-wheeler rashly and negligently when met with accident with mini-truck - Thus only because he was not having a licence, he could not be held to be guilty of contributory negligence. **AIR 2008 SUPREME COURT 2405 "Sudhir Kumar Rana v. Surinder Singh": (2008)12 SCC 436.**

Driver, brother of owner of motor vehicle - Holding fake licence at time of accident - Insurer is not liable to pay compensation **AIR 2008 SUPREME COURT 1073 "Premkumari v. Prahlad Dev"**

Driver of offending vehicle, alleged to be not having valid and operating driving licence - Evidence of witness who produced official records clearly established that no driving licence was issued to said driver in order to enable and legally permit him to drive motor vehicle - There was no cross-examination of said witness - Liability could not be saddled on Insurance Company. **AIR 2008 SUPREME COURT 1408 "Oriental Insurance Co. Ltd. v. Prithvi Raj"**

Liability of insurer - Deceased died in road accident when scooterist hit his bicycle - Accident occurred due to rash and negligent driving of scooter - Driver of scooter had admittedly no valid licence to drive vehicle - He was holding licence for driving Heavy Motor Vehicle only - Act of driving totally different class of vehicle was in violation of S.10 (2) **AIR 2008 SUPREME COURT 2218 "Oriental Insurance Co. Ltd. v. Zaharulnisha" : (2008) 12 SCC 385:**

Driver of offending vehicle was holder of licence of three wheeler i.e. autorickshaw delivery van - Licence was not meant for driving 'transport vehicle' but for goods carrying public carrier - Fact that licence was granted for 20 years and not 3 years shows that driving licence was not for transport vehicle - Insurer is, therefore, not liable. **AIR 2008 SUPREME COURT 2266 "New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir"**

Driving licence not effective on the date of accident renewed after the grace period. It cannot be said that the driver had a driving licence at the time of accident. **National Insurance Company Vs. Vidyadhar Mahariwala (2008) 12 SCC 701; AIR 2009 SUPREME COURT 208 "** see also **Ram Babu Tiwari Vs. United India Insurance Company (2008) 8 SCC 165 ; New India Assurance Company Vs. Suresh Chand Agrawal AIR 2009 SC 2987 : (2009) 15 SCC 761**

Vehicle involved in accident driven by driver holding L. M. V. licence - No endorsement on licence to drive transport vehicle - Permit issued by Transport Authority clearly showing that vehicle in question was a 'transport vehicle' - Yet holding vehicle to be L. M. V. on basis of unladen weight and fact that it was not carrying goods at relevant time - And saddling liability on insurance company - Improper. **AIR 2008 SUPREME COURT 614 "New India Assurance Co. Ltd. v. Prabhu Lal"**

Ground, driver of offending vehicle possessing forged licence - Renewal of forged licence - Would not fasten any liability on insurer to indemnify owner - Same does not amount to deficiency in service - Order holding insurer liable to indemnify owner for losses suffered by him - Set aside. **AIR 2008 SUPREME COURT 329 "United India Insurance Co. Ltd., M/s. v. Davinder Singh"**

Driving licence - Renewal - Cannot cure fatality inherent in fake licence - Once initial burden on insurer to show that licence is fake is satisfied - Natural consequences have to flow. **AIR 2007 SUPREME COURT 1563 "National Insurance Co. Ltd. v. Laxmi Narain Dhut" = 2007 AIR SCW 2279**

Motor Vehicles Act (59 of 1988), S.149, S.15 - MOTOR VEHICLES - INSURANCE - Liability of insurer - Defence that driver did not have valid licence - Has to be established on facts of case **"Ishwar Chandra v. Oriental Insurance Co. Ltd." AIR 2007 SUPREME COURT 1445 : (2007) 10 SCC 650**

licence had lapsed before the accident thus it is in violation of the policy conditions as per the Supreme Court Judgment in **Ishwar Chandra & others The Oriental Insurance Co. 2007 (2) PLJR 168 (SC) and National Insurance Company Ltd. Vs. Laxmi Narain Dhut (2007) 3 SCC 700**

The question of licence only comes into play, when there is an accident **Jitendra Kumar Vs. Oriental Insurance Company (2003) 6 SCC 420.**

The driving licence found fake - this includes cases where the original licence was found fake but subsequently renewal by other district transport authorities. The Supreme Court is of the opinion that the insurer must prove that the owner was guilty of the willful breach of the policy conditions of insurance. To avoid its liability the insurance company must prove that the owner was guilty of willful breach of contract of insurance and if it is able to prove then it can recover the amount from the owner of the vehicle. If the court gives a finding in favour of the insurer then it can recover it by filing an execution case or a certificate proceeding **National Insurance Company Vs. Baljit Kaur AIR 2004 SCW 212.**

The driver holding a learner's licence: - Even if the driver the vehicle was driven by a person having a learner licence the Insurance Company will be liable to satisfy the award.

Expiry of Driving licence:- This issue has been left open by the Supreme Court.

No Driving licence :- The person driving the vehicle without licence is liable for prosecution under section 181 of the Motor Vehicles Act, 1988 and if the licence has lapsed the law it self gives a grace of 30 days for renewal it will treated that the driver was having a driving licence.

Vehicle driven at the time of accident was of a different class:- If the driver has been given a licence to drive a particular type of a vehicle i.e. light motor vehicle he can drive all types of light motor vehicle. **National Insurance Company Vs. Swaran Singh and others and various other cases AIR 2004 SCW 663 : (2004) 3 SCC 297**

A fake driving licence cannot be transformed as a genuine licence even if it has been renewed. **New India Assurance Company vs. Kamla 2001 AIR SCW 1340: (2001) 4 SCC 342 SEE ALSO National Insurance Company Ltd. Vs. Geeta Bhat and others (2008) 12 SCC 426**

The burden of proof that the driver of the vehicle meeting with accident did not have a proper licence lies with the Insurance Company challenging the same. **Suresh Mohan Chopra vs. Lakhi Prabhu Dayal 1990 Supp SCC 696: AIR 1990 SC 1979.**

**If licence not produced before the Tribunal the liability will be of the owner New India Assurance Company Vs. Most. Lahaso Devi 2002 (3) PLJR 166**

It becomes immaterial as to whether the driver was having a valid Driving Licence or not if the deceased was the driver of the vehicle in question and was a workman **Oriental Insurance Company vs. Smt. Manjeet Kaur 2000 (4) PLJR 225**

Liability of the Insurance Company cannot be taken away even though the vehicle was not driven by a proper licensed persons as the liability will be of the owner and the owner is insured by the Insurance Company thus both liable. **SOHAN LAL PASSI VS. P. SESH REDDY (1996) 5 SCC 21:**

Merely showing that the driver did not have a driving licence is not sufficient for the Insurance Company to discard its liability unless it proves that the owner/insured was aware of the fact that the driver did not have a driving licence and allowed the vehicle to be driven by him. **United India Insurance Company Vs. Lehu (2003) 3 SCC 338. See also NIRMALA KOTHARI Vs. UNITED INDIA INSURANCE CO. LTD. Civil**



**Appeal Nos. 1999-2000 of 2020 (Arising Out of Special Leave Petition (C) Nos. 14739-14740 of 2018)**

**Decided on : 04-03-2020**

Vehicle damaged due to accidental fire, the Insurance Company repudiated the claim on the ground that the driver did not have a valid driving licence at the time of the incidence. Section 149(2) of the Motor Vehicles Act, 1988 does not empower the Insurance Company to repudiate the claim on the ground of driving licence **Jitendra Kumar Vs. Oriental Insurance Company (2003) 6 SCC 420 : AIR 2003 SUPREME COURT 4161**

In the finding of fact it is found that the insured had given the vehicle for driving to an unlicensed driver, the Insurance Company gets exonerated of its liabilities **United India Insurance Company vs. Gain Chand & others (1997) 7 SCC 558: AIR 1997 SC 3824 see also National Insurance Co. Ltd. Vs. Debrat Kumar (1998) 1 BLJR 32.**

If the driver was holding a proper driving licence earlier and it had lapsed before the date of accident but if there is a subsequent renewal it cannot be held that the driver was not having a proper driving licence at the time of accident. **National Insurance Company Limited Versus Smt. Abha Singh (1998) 2 BLJR 1292: 1998 (2) PLJR 337**

Light Motor Vehicle neither having a permit for goods carriage nor carrying any goods on the date of the accident, even though designed to be used as a goods carriage or transport vehicle remains a Light Motor Vehicle. Driving licence issued under form 6, is effective and valid licence to drive such vehicle. **Ashok Gangadhar Maratha Vs. Oriental Insurance Company (1999) 6 SCC 620 : 2000 ACJ 319**

Production of a photocopy of a driving licence does not prove that the driver had a valid driving licence **United India Insurance Co. Ltd. Vs. Anbari and others 2000 ACJ 469**

A person having a valid driving licence to drive a particular category of vehicle (Tractor) does not become disabled to drive that vehicle merely because a trailer is added to it. This is in case of a tractor. **Nagasetty Vs. United India Insurance Company (2001) 8 SCC 56: AIR 2001 SC 3364**

The word effective in the expression "Effective Driving Licence" in section 3 of Motor Vehicles Act, 1988 means a valid licence both as regards the period and type of vehicle **Ashok Gangadhar Maratha Vs. Oriental Insurance Company (1999) 6 SCC 620 : 2000 ACJ 319 see also Mahesh Kumar Vs. Khurshid Anwar 2002 (4) PLJR 350**

The licence if expired but not renewed within the stipulated period and the accident has occurred after the lapse of driving licence and the driver not having a driving licence at the time of accident the Insurance Company is not liable to pay the claim **Malla Prakashrao vs. Malla Janaki and Others (2004) 3 SCC 343 see also National Insurance Company Vs. Kusum Rai 2006 (2) PLJR 306 (SC): 2006 AIR SCW 1649: (2006) 4 SCC 250; Ishwar Chand & others Vs. The Oriental Insurance Co. 2007 (2) PLJR 168 (SC) and National Insurance Company Ltd. vs. Laxmi Narain Dhut (2007) 3 SCC 700; The Oriental Insurance Co. Vs. Syed Ibrahim (2007) 11 SCC 512: AIR 2008 SUPREME COURT 103**

Driver of a commercial Vehicle not holding the licence to drive commercial vehicle i.e. valid licence Insurance Company not liable to pay the claimed amount **National Insurance Company Vs. Kusum Rai 2006 (2) PLJR 306 ( SC) : 2006 AIR SCW 1649 : (2006) 4 SCC 250; The Oriental Insurance Co. Vs. Syed Ibrahim (2007) 11 SCC 512**

if the owner of the vehicle has satisfied himself that the driver had a licence and was driving competently

there is no breach of section 149 (2) (a) (ii) of the Motor Vehicle's Act, 1988 and the Insurance Company liable to pay the compensation. **Lal Chand Vs. Oriental Insurance Company 2006 AIR SCW 4832: (2006) 7 SCC 318 : AIR 2008 SUPREME COURT 103**

A driver having valid licence to drive 'light motor vehicle' is authorised to drive 'light goods vehicle' as well. No additional endorsement is required. **KULWANT SINGH Vs. ORIENTAL INSURANCE COMPANY [2014] 0 Supreme(SC) 53350**

### **DRIVING LICENCE (LIGHT MOTOR VEHICLE)**

(i) 'Light motor vehicle' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No. 54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued Under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No. 54/1994 w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), medium passenger motor vehicle in Section 10(2)(f), heavy goods vehicle in Section 10(2)(g) and "heavy passenger motor vehicle" in Section 10(2)(h) with expression 'transport vehicle' as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. **Mukund Dewangan vs. Oriental Insurance Company Limited AIR 2017 (SC) 3668 : MANU/SC/0797/2017 : 2017(7)SCALE731**

The law which has been laid down by a three Judge Bench of this Court in Mukund Dewangan (supra) binds this Court. As a matter of judicial discipline, we are duty bound to follow that decision which continues to hold the field. **M.S. BHATI Vs. NATIONAL INSURANCE COMPANY LTD IndiaLawLib/1424882(2019) 2 CPJ 79**

Can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy. **Sant Lal v. Rajesh and Ors AIR 2017 SUPREME COURT 4054**

**Materials on record showing that the driver proved his licence – Secondly at that time Insurance Company not raising any objection – Thirdly Insurance Company not adducing any evidence to prove**

**that the licence was either fake or invalid – Not open to Insurance Company to now contend that driver did not possess valid licence. Rakesh Kumar & Etc. Etc. – Appellants Versus United India Insurance Company Ltd 2016 4 PLJR(SC) 100 : 2016 14 SCC 219 : 2016 0 Supreme(SC) 541;**

Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. **AIR 2013 SUPREME COURT 2262 "S. Iyyapan v. United India Insurance Company Ltd" SEE ALSO KULWANT SINGH & ORS. VERSUS ORIENTAL INSURANCE COMPANY LTD. 2015 1 PLJR(SC) 206 : 2014 12 Scale 356: 2015 2 SCC 186 : [2014] 0 Supreme(SC) 772**

There is a distinction between light motor vehicle and transport vehicle , a transport vehicle may be light transport vehicle but for the purpose of driving the same a distinct licence is required for the same **Oriental Insurance Company Ltd. Vs. Angad Kol and others 2009 AIR SCW 2747 : (2009) 11 SCC 356 : AIR 2009 SC 2151**

## **DEPENDENTS**

where the family of the bachelor is large and dependents on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning **sisters** or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. **Radhakrishna and Anr. Vs. Gokul and Ors. 2017(2)PLJR141**

### **father**

The father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependant **Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009 : (2009) 6 SCC 121 see also Munna Lal Jain and Ors.Vs. Vipin Kumar Sharma and Ors.**

### **sister**

- In the absence of evidence to the contrary, brothers and **sisters** will not be considered as dependants, because they will either be independent and earning, or married, or be **dependent** on the father. :**Radhakrishna and Anr Vs. Gokul and Ors. 2017(2) PLJR 141 see also United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

## **MAJOR SONS**

- The major sons have their own source of income and were not dependent on the deceased

and the two grand-daughters are primarily dependent on their father and not on their grand-father. We feel that 50% deduction is called for and if this factor is taken into consideration then the loss of dependency is Rs.1,82,250/- and if multiplier of 5 is used, the compensation works out to Rs.9,11,250/-. In addition, the claimants would be entitled to Rs.70,000/- for love and affection and funeral expenses etc. as per the judgment of this Court passed in the case of Pranay Sethi (AIR 2017 SC 5157) (supra). Accordingly, the amount of compensation is reduced to Rs.9,81,250/- along with interest awarded by the Tribunal. **New India Assurance Co. Ltd v. Vinish Jain and Ors. AIR 2018 SC (Supp) 1227 see also National Insurance Company Limited Versus Birender and Ors. 2020 0 Supreme(SC) 25 Decided on : 13-01-2020 AIR 2020 (SC) 434 : (2020) 1 JLJR 328 : (2020) 1 PLJR 372 .**

### LEGAL REPRESENTATIVE

Entitlement to compensation - Married daughter of deceased - Though not dependant on deceased is entitled to compensation - She is 'legal representative' under S. 166. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate **Manjuri Bera v. Oriental Insurance Co. Ltd. AIR 2007 S. C. 1474 : (2007) 10 SCC 643**

Society in which the deceased lived may also be claimants, if it proves its dependence on the deceased **MONTFORD BROTHERS OF ST.GABRIEL Vs. UNITED INDIA INSURANCE [2014] 3 SCC 394 / [2014] 2 JCR(SC) 199 / [2014] 1 Supreme 377 AIR 2014 SUPREME COURT 1550 see also Manjuri Bera v. Oriental Insurance Co. Ltd. AIR 2007 S. C. 1474 ; Gujarat State Road Transport Corporation, Ahmedabad Petitioner v. Ramanbhai Prabhatbhai and another AIR 1987 SC 1690**

As per Section 166 of the M.V. Act, person, who happens to be legal representative may file petition under the said Section of the Act. Though, the word legal representative has not been defined in the said Act, but in my considered opinion, it means, the person who represents the estate of the deceased even without title either as executors or administrators in possession of the estate of the deceased. Dependents may be the legal representative of the deceased, but legal representative may not necessarily be dependents. In case of claim case filed under Section 166 of M.V. Act, the amount of compensation is worked out on the basis of loss of dependency, but as the claimants-appellants do not happen to be dependent of the deceased. So, no question of loss of dependency arises and in my considered view, the claimants appellants are not entitled to get compensation under Section 166 of M.V. Act. they may get compensation as provided under no fault liability to the tune of Rs. 50,000/- being legal representative of the deceased. . **Shyam Nath Sah Versus Sri Shankar Kumar Gupta Miscellaneous Appeal No.1016 of 2010 disposed of on 21-08-2018**

the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. **Shyam Nath Sah Versus Sri Shankar Kumar Gupta Miscellaneous Appeal No.1016 of 2010 disposed of on 21-08-2018**

## **DUTY OF POLICE**

Subsection (6), which was added by way of amendment in 1994 to Section 158 casts a duty on the officer incharge of the police station to forward a copy of the information (FIR)/report regarding any accident involving death or bodily injury to any person within 30 days from the date of information to the Claim Tribunal having jurisdiction and also send one copy to the concerned insurer. This subsection also casts a duty on the owner of the offending vehicle, if a copy of the information is made available to him, to forward the same to the Claims Tribunal and the insurer of the vehicle. **Vimla Devi & Ors. Versus National Insurance Company Limited & Ors. 2018 0 Supreme(SC) 1140; see also Smt. Rekha Devi Vs. Shyam Sunder Singh 2019 (2) PLJR 563**

## **ENHANCEMENT OF COMPENSATION**

Loss of income and future prospect - Claimant aged about 16 years was a brilliant student at time of accident - Suffering permanent total disablement of both her legs due to accident - Claimant held, is entitled to 50% increase under head of loss of income and future prospects. **AIR 2014 SC (Supp) 22 "V. Mekala Vs. M. Malathi"**

There is no restriction that Tribunal / Court cannot award compensation exceeding the amount claimed. **AIR 2008 SUPREME COURT 1221 "A.P.S.R.T.C. v. M. Ramadevi"**

Under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there should be change of cause of action. It is also to be stated that as provided under sub-section (4) to S. 166, even the report submitted to the Claims Tribunal under sub-section (6) of S. 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the Court may permit amendment to the claim petition." **Nagappa v. Gurdial Singh and Ors. (2003 (2) SCC 274) : 2002 AIR SCW 5348**

## **EVIDENCE ACT**

Proceedings before the Motor Vehicles Act is a summary proceeding thus provisions of the Evidence Act will not be applicable in such proceedings **National Insurance Company vs. Mahendra Prasad 1997 PLJR (1) 907.**

User of vehicle has to be established by cogent evidence **FAHIM AHMAD Vs. UNITED INDIA INSURANCECO.LTD[2014]2Supreme 633**

As the claimant has assessed the age of the deceased and mentioned it in the claim petition with date of birth in precise , hence the evidence deduced by the claimant against its aforesaid case is not admissible in the eyes of law as no evidence can be given against the pleading .**National Insurance Company Ltd. Vs. Sri Laleshwar Prasad Sharma 2019 (1) BLJ 107**

## **ESTOPPEAL**

Tribunal was right in holding that the driver of the offending vehicle possessed a valid driving license at the time of accident and that the Insurance Company failed to adduce any evidence to prove otherwise. The Insurance Company had no right to raise any objection about the admissibility and manner of proving of the license at a later stage (**See Oriental Insurance Company Ltd. Vs. Premlata Shukla & Ors., (2007) 13 SCC 476**) the High court was not right in reversing the finding of the Tribunal. **Rakesh Kumar & Etc. Etc. Versus United India Insurance Company Ltd. & Ors. Etc. Etc. 2016 0 Supreme(SC) 541;**

### **FAKE CLAIM**

Dharampal driver had by his negligent act run over Ram Kanwar, the most natural conduct would have been to lodge a complaint. . Complaint was not lodged for nearly one month is a significant omission in the case. The High Court has also noticed that there were no hospital records to indicate, from the nature of the injuries, that death had occurred due to an accident of the nature alleged. . The fact that proper medical records were not available has, in this background, weighed with the High Court. Besides the above aspects, the High Court has found that the assessment of compensation by the Tribunal is perverse.

On a careful analysis of the judgment of the High Court and the material on the record, we find no reason to take a view at variance with that of the High Court. The reasoning contained in the award of the Tribunal was perfunctory. The Tribunal failed to notice crucial aspects of the case which have a bearing on the question as to whether the death of Ram Kanwar was caused as a result of the accident caused by the tractor. Each of the circumstances relied upon by the High Court is germane to the ultimate conclusion that **a false case was set up to support a claim for compensation**. The appellants have not been able to displace the careful analysis of the evidence by the High Court and the findings which have been arrived at. **ANIL & ORS Versus NEW INDIA ASSURANCE CO. LTD. & ORS 2018 0 Supreme(SC) 43**

### **FUTURE PROSPECT**

Deceased aged 42 years – Self-employed – Future prospects cannot be denied in light of in National Insurance Company Limited v Pranay Sethi, **AIR 2017 SUPREME COURT 5157** :[\(2017\) 13 SCALE 12](#) settles the issue. The deceased was self-employed. In such a case, future prospects cannot be denied. The grant must be in accordance with the following principle set down in the judgment:

“(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.” **RELIANCE GENERAL INSURANCE COMPANY LTD VERSUS SHALU SHARMA AND ORS AIR 2018 SUPREME COURT 712 : 2018 0 Supreme(SC) 102**

Deceased, unmarried aged 21 years at time of accident - Working as contract worker - High Court taking established income of deceased at Rs. 4,000/- p.m. but not providing for future prospects while computing compensation under head of loss of dependency - 40% of future prospects granted towards established income of deceased - Compensation towards loss of dependency modified to Rs. 6,04,800/- - Claimants held entitled to enhanced compensation of Rs. 6,74,300/- along with interest of 9% p.a. **Munusamy and Ors. v. Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd. AIR 2018 SUPREME COURT 816**

The judgment of a Constitution Bench of this Court in National Insurance Company Limited v Pranay Sethi, [\(2017\) 13 SCALE 12](#) settles the issue. The deceased was self-employed. In such a case, future prospects cannot be denied. The grant must be in accordance with the following principle set down in the judgment:

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

“(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

Since the deceased was 42 years of age, an addition of 25% on the ground of future prospects would be warranted instead of 30% computed by the Tribunal. **RELIANCE GENERAL INSURANCE COMPANY LTD VERSUS SHALU SHARMA AND ORS 2018 AIR (SC) 712; 2018 0 Supreme(SC) 102;**

### **FAKE POLICY/ COVER NOTE/ NO POLICY**

. If the Insurance Company wanted to prove that the vehicle was not insured then it would have produced the appropriate register of the said year, **Branch Manager, National Insurance Company Ltd., Patna Versus Maheshwar Prasad Singh 2007 1 PLJR 301; 2006 0 Supreme(Pat) 672;**

If it is proved by evidence that on the date and time of accident the offending vehicle was not insured with the insurance company and the insurance policy found to be fake and forged after enquiry, the compensation is to be paid by the owner of the vehicle. **United India Insurance Company Ltd. Vs. Kum Kum Devi 2019 (5) BLJ 863**

The Tribunal has absolved the insurance company on the finding that no premium was received by the insurance company nor any insurance policy was ever issued by the insurance company in relation to the offending vehicle. The respondents no.2 and 3 had relied on a Cover Note which according to respondent No.1 - Insurance Company was fraudulently obtained from the then Development Officer, who was later on sacked by respondent No.1 Insurance Company. The possibility of misuse of some cover notes lying with him could not be ruled out. **Mangla Ram Versus Oriental Insurance Co. Ltd. & Ors. AIR 2018 (SC) 1900**

### **FRAMING OF ISSUES**

The High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See **National Insurance Company Ltd. v. Naresh Kumar and Ors. ((2000) 10 SCC 198** and **State of Punjab and Anr. v. Navdeep Kuur and Ors. (2004) 13 SCC 680**]. **U.P.S.R.T.C.Vs. Mamta and Ors. , AIR 2016 SC 948 : 2016 (2) PLJR293,**

It is settled principle of law that framing of issues are essential part of adjudication in view of Rules 236, 237 of Bihar **Motor Vehicles** Rules, 1992 and Rules 16, 17 and 19 of Bihar **Motor Vehicles** Accident Claims Tribunal Rules, 1961. **Anita Devi Vs. Krishna Sharma 2014 (3) PLJR 708** See Also **Oriental Insurance Company Vs. Awadhesh Kumar Sharma and Ors 2015 (2) PLJR 777; Oriental Insurance Co. Vs. Superintendent, Bihar State Road Transport Corporation and Ors. 2015 (2) BLJ 278 , New India Assurance Company Vs. Bibi Kuresha Khatoon 2019 (2) BLJ 152**

The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. **The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application.** The objection raised by the Insurance Company about maintainability of claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in para 5. Since all issues (points for determination) are required to be considered by the Claims Tribunal together in light of the evidence that may be let in by the parties and not in piecemeal, "**Bimlesh v. New India Assurance Co. Ltd.**" AIR 2010 SUPREME COURT 2591

Liability of Insurance Company - Defence raised by Insurance Company that driver of vehicle had no licence - However, before the Tribunal Insurance Company neither pleaded nor led any evidence to show that driver of truck had no licence - Insurance company fails to discharge burden of proof that driver had no licence- Insurance company liable to pay compensation awarded by Tribunal. "**Punam Devi v. D. M. New India Assurance Co. Ltd.**" AIR 2004 SUPREME COURT 1742

If no issue is framed and no evidence is given to substantiate the plea the contention raise cannot be accepted **G. Rama vs. T.G. Seshagiri Rao (2008) 12 SCC 392**

As per Rule 19 of the Motor Vehicles Accident Claims Tribunal Rules , the Tribunal to answer each of the issues framed. **Oriental Insurance Company Ltd. Vs. Thakuni Devi and others 2002 (2) PLJR 780**

The policy was against a dead person, the issue not supported by evidence that the insurer had no knowledge of the death of the owner of the vehicle , insurer cannot deny his liability **United India Insurance Company Vs. Santro Devi and others 2009 AIR SCW 647 : (2009) 1 SCC 558**

There is no need of framing of specific issue if the point raised is proved by the fact that the owner while driving the vehicle was not having an effective driving licence **AIR 2009 SUPREME COURT 2177 "Bhuwan Singh v. M/s. Oriental Insurance Co. Ltd." 2009 AIR SCW 2865**

Simply the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver-respondent No. 2. On this issue, on comparing the reasons given by the Tribunal while discussing the issue No.1 **AIR 2014 SC (Supp) 1218 "Lachoo Ram Vs. Himachal Road Transport Corpn"**

An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See National Insurance Company Ltd. v. Naresh Kumar and Ors. ((2000) 10 SCC 198 and State of Punjab and Anr. v. Navdeep Kaur and Ors. (2004) 13 SCC 680]. **U. P. S. R. T. C. v. Km. Mamta and Ors .AIR 2016 SUPREME COURT 948**

### **FIRST INFORMATION REPORT**

If F.I.R. is a part of the claim case , it cannot be ignored. **National Insurance Company Vs. Rattani and others (2009) 2 SCC 75 : 2009 AIR SCW 992 : AIR 2009 SC 1499**

### **GENERAL CLAUSES ACT, 1897**



Section 26 of the General Clauses Act, 1897 provides, "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

It is well settled that an act or an omission can constitute an offence under the IPC and at the same time, be an offence under any other law. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

### **GRATUITOUS PASSENGER**

The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case. **Shivaraj Versus Rajendra & Anr. 2018 0 Supreme(SC) 863; AIR 2018 SUPREME COURT 4252**

the tractor was insured for agricultural purpose, the victim was coming on the trailer of the tractor with brick for the construction of his building itself shows that the tractor was being used for commercial purposes and for that no extra premium was paid to the Insurance Company result is that the deceased was a gratuitous passenger inasmuch as the tractor owner by engaging the tractor in non-agricultural purpose itself violated the terms of the insurance policy will not liable the Insurance Company to indemnify the insurer. **The United India Insurance Company Limited Vs.: Biltan Sao and Ors. [MANU/BH/0908/2015](#)**

A driver employed on another vehicle of the same employer, travelling in cabin of vehicle meeting accident - Claim for compensation - Merely travelling in cabin does not make his case different from any other gratuitous passenger - Claim not maintainable. **Manager, National Insurance Co. Ltd. Vs. Santosh [2013] SCC 41 : AIR 2013 (SC) 1064: [2013] 1 Supreme 108**

The statutory policy only covers employees of the insured - Does not cover someone traveling not being an authorised agent in place of the owner of goods - Employee of owner of goods thus not covered. **2013 AIR SCW 301 "Sanjeev Kumar Samrat v. National Insurance Co. Ltd.": AIR 2013 (SC) 1125**

Gratuitous passenger travelling in goods carriage - Insurance Company cannot be held liable to settle claim. **AIR 2008 SC (Supp) 1631 "National Insurance Co. Ltd. v. Prema Devi"**

Policy of insurance in respect of scooter was Act policy - Scooter met with accident - Death of pillion rider, a gratuitous passenger in accident - Claim for compensation - Insurance Company would not be liable to pay compensation. **AIR 2009 SUPREME COURT 626 "General Manager, United Insurance Co. Ltd. v. M. Laxmi"**

Marriage Party traveling in a goods carriage Deceased thus was gratuitous passenger and policy would not cover his life - Insurance Company not liable. **National Insurance Company Vs. Rattani and others (2009) 2 SCC 75 : 2009 AIR SCW 992 : AIR 2009 SC 1499**

Deceased travelling in truck – Not owner of goods carried in truck - Driver of truck also not holding valid licence to drive goods carriage - Liability to pay compensation is of owner and not insurer. **AIR 2008 SUPREME COURT 2252 "National Insurance Co. Ltd. v. Kaushalya Devi"**

Goods carriage carrying passengers - Accident - Evidence of one of passengers showing that he was travelling in vehicle with his goods as owner and not the deceased - Deceased thus was gratuitous passenger and policy would not cover his life - Insurance Company not liable. **AIR 2008 SUPREME COURT 484 "National Insurance Co. Ltd. v. Cholleti Bharatamma"** see also **National Insurance Company Vs. Kaushalaya Devi 2008 (4) PLJR 72 (SC)**

Passenger travelling in goods carriage - Insurer have no liability therefore. **AIR 2008 SUPREME COURT 245 "Thokchom Ongoi Sangeeta v. Oriental Insurance Co. Ltd."**

Gratuitous passenger in a private vehicle is not covered in the policy **United India Insurance Company Vs. Tilak Singh (2006) 4 SCC 404** see also **Oriental Insurance Company Vs. Sudhakaran K.V. and others (2008) 7 SCC 428**

Granting of ad interim compensation to a passenger of a truck, an unauthorised passenger is illegal **New India Assurance Company vs. Smt. Mamta Devi (1995) 1 BLJR 332.**

Goods Vehicle cannot be considered to be a passenger vehicle used for carrying passenger for hire or reward, on death of owners of goods Insurance Company is not liable for payment of compensation. **Smt. Mallawwa vs. Oriental Insurance Company &ors. (1999) 1 BLJR 1 : AIR 1999 S.C. 589 : 1999 ACJ 1** See also **Krishna Kumar Agrawal vs. Most. Komiya Devi 1999 (1) PLJR 870 THESE CASES HAVE BEEN DISTINGUISHED BY THE SUPREME COURT IN New India Assurance Company VS. Satpal Singh (2000) 1 SCC (Over Ruled)**

Gratuitous passenger cannot be excluded after the 1994 amendment of the Motor Vehicles Act, 1988 **New India Assurance Co. Vs. Asha Rani 2002 AIR SCW 5259 : (2003) 2 SCC 223 ; see also National Insurance Company Ltd. Vs. Bhukya Tara (2010) 14 SCC 768 : (2012) 2 SCC (Cri) 349**

Insurance Company not liable to pay compensation for death of passengers traveling in goods Vehicle. **Oriental Insurance Company Vs. Devireddy Konda Reddy and others 2003 AIR SCW 513 : Oriental Insurance Company Vs. Jogi Subbamma and others 2003 AIR SCW 513 : (2003) 2 SCC 339 National Insurance Company Vs. Bommithi Subbhayamma (2005) 12 SCC 243**

Goods vehicle - Passenger travelling in - Compensation - Liability of insurer - Definition of 'goods carriage; under new Act does not include passengers unlike old Act - Insurer not liable to pay compensation in case of injury or death of gratuitous passenger. **"New India Assurance Co. Ltd. v. Vedwati" AIR 2007 S.C. 1334 : (2007) 9 SCC 486** see also **National Insurance Company Vs. Prema Devi (2008) 5 SCC403**

even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under S. 2(14) and consequently, a "transport vehicle" under S. 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, the tractor-trailer in the present case falls under S. 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under S. 2(47) of the M. V. Act, 1988. **AIR 2005 SUPREME COURT 3428 "Natwar Parikh and Co. Ltd., M/s. v. State of Karnataka"= 2005 AIR SCW 4361**

Deceased travelling as 'gratuitous passenger' not covered under insurance policy - Insurer directed to pay amount of compensation to claimants and recover same from insured. **Manuara Khatun and Ors. v. Rajesh Kr. Singh and Ors AIR 2017 SUPREME COURT 1204** see also **Anu Bhanvara Etc. v. IFFCO Tokio General Insurance Company Limited and Ors. AIR 2019 SUPREME COURT 3934**

## HIT AND RUN CASE –

Claimants would be entitled to compensation of at least Rs.25,000/- as per provisions of S.161(3)(a) of Act. **"Saroj v. Het Lal" AIR 2011 SUPREME COURT 671**

## HOUSE WIFE

Monthly income – Deceased house maker – Not possible to monetize domestic work done by house maker – Reasonable to fix her income at Rs.3,000/- per month. **JITENDRA KHIMSHANKAR TRIVEDI & ORS. Versus KASAM DAUD KUMBHAR & ORS. –2015 4 SCC 237;**

The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric. **Arun Kumar Agrawal & Anr. vs. National Insurance Company Ltd. & Ors. [2010] 9 SCC 218]**

## HUSBAND

### **Claimant husband not dependent on wife's income**

the husband would be getting a lump sum payment which but for his wife's death would have been available to him in dribs and drabs over a number of years. Allowance must be made for the uncertainties and the total figure scaled down accordingly. The deceased might not have been able to earn till the age of retirement for some reason or other, like illness or for having to spend more time to look after the family which was expected to grow. Thus the amount assessed has to be reduced taking into account these imponderable factors **M.P. State Road Transport Corporation, Bairagarh, Bhopal Appellant v. Sudhakar and others, etc Respondents. AIR 1977 SUPREME COURT 1189**

## Income Tax Return

The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. **Malarvizhi & Ors. Versus United India Insurance Company Limited & Anr. 2019 0 Supreme(SC) 1338;**

## INDIAN PENAL CODE

Chapter XIII of the M.V. Act, 1988 deals with "Offences, Penalties and Procedure". It deals with offences relating to contraventions of the provisions of the M.V. Act, or any rule, regulation or notification made thereunder. It primarily deals with offences relating to licenses, driving of vehicles by unauthorized persons, control of traffic, maintenance of motor vehicles, using a vehicle in an unsafe condition, or without registration or permit, driving beyond speed limits, driving dangerously or driving by a drunken person, or by a person under the influence of drugs,

The IPC, on the other hand, is punitive and deterrent in nature. The principal aim and object is to punish offenders for offences committed under the IPC. The relevant provisions of the IPC which are necessary to advert to are extracted herein below:

**5. Certain laws not to be affected by this Act.**-Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

**279. Rash driving or riding on a public way.**- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**304. Punishment for culpable homicide not amounting to murder.**

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

**304A. Causing death by negligence** - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**337. Causing hurt by act endangering life or personal safety of others.**- Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**338. Causing grievous hurt by act endangering life or personal safety of others.** -Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

There is no conflict between the provisions of the IPC and the MV Act. Both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The penal consequences provided under both the statutes are also independent and distinct from each other. The ingredients of offences under the both statutes, as discussed earlier, are different, and an offender can be tried and punished independently under both statutes. The principle that the special law should prevail over the general law, has no application in cases of prosecution of offenders in road accidents under the IPC and M.V. Act.

It is pertinent to mention that there is no provision under the M.V. Act which separately deals with offences causing death, or grievous hurt, or hurt by a motor vehicle in cases of motor vehicle accidents. Chapter XIII of the M.V. Act is silent about the act of rash and negligent driving resulting in death, or hurt, or grievous hurt, to persons nor does it prescribe any separate punishment for the same; whereas Sections 279, 304 Part II, 304A, 337 and 338 of the IPC have been specifically framed to deal with such offences. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

**INSURANCE CONTRACT**

The Motor Vehicles Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Ss. 146 and 147 is concerned, the same sub serves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-a-vis a contract of insurance qua contract. **AIR 2009 SC (Supp) 961 "National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela"**

Accident occurring before cancellation of policy - Insurer liable to pay. **United India Insurance Company Vs. Laxmamma and others (2012) 5 SCC 234: AIR 2012 SUPREME COURT 2817 .**

### **INTERIM COMPENSATION**

No fault compensation - Victim of accident himself at fault and cause of accident - Does not deprive him from no fault compensation - Claim made on fault basis getting rejected - Order directing insurance company to recover from claimants amount paid on no fault basis - Improper. **AIR 2010 SUPREME COURT 2913 "Indra Devi v. Bagada Ram"**

The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy "**Eshwarappa v. C.S. Gurushanthappa**". **AIR 2010 SUPREME COURT 2907**

Providing for no fault liability to the extent of Rs. 50,000/- - Is not retrospective. **AIR 2008 SUPREME COURT 2276 "State of Punjab v. Bhajan Kaur"**

Ad interim Compensation is to be paid before the adjudication of the claim under section 110 A (Section 166) **S.D.Patil vs. V.U.More (1991) 3 SCC 530.**

Granting of ad interim compensation to a passenger of a truck, an unauthorised passenger is illegal **New India Assurance Company vs. Smt. Mamta Devi (1995) 1 BLJR 332.**

The awarded amount under section 140 of the Motor Vehicles Act, 1988 of insured vehicles is to be paid by the insured if the policy is not denied. **Kanhai Rai Vs. Dharampal 2001 (3) PLJR 103. see also Shanti Devi Vs. Basmatti Devi 2006 (1) PLJR 603**

Ad interim compensation is payable at the old rate if the accident has taken place before the amendment of Motor Vehicles Act. **New India Assurance Company vs. YASODA DEVI & OTHERS 1996 (2) ALL PLR 876.: (1996) 2 BLJR 1000 : 1996 (2) PLJR 329 SEE ALSO 1996 PLR 512, National Insurance Company vs. Bhola Shah 1997 (1) PLJR 920 :**

Ad interim compensation is not payable by the Insurance Company in motor accident cases. It is the owner who is held liable to pay the same **K. Madakumar vs. M.D. Thanthal Pariyar Transport Corporation (1996) 2 SCC 736 : AIR 1996 SC 1217, New India Assurance Company vs. Turki Hi (1995) 1 BLJR 374, Surya Jyoti Devi vs. Krishna Kumar Singh 1997 (1) PLJR 912, National Insurance Company vs. Jethu Ram 1998 ACJ 921(S.C) ; Helen Rebello vs. Maharashtra State Road Transport Corporation .**

**(1999) 1 SCC 90 ( Para 36) ; National Insurance Company Ltd. Layachi Devi 2001 (1) PLJR 49**

In a case where two vehicles insured with two different Insurance Companies collide the ad interim compensation is to be shared by both the Insurance Companies. **Oriental Insurance Company Vs, Jagdeo Paswan 1997 (1) PLJR 987.**

A proceeding under section 140 of the Motor Vehicles Act, 1988 is a summary proceeding. Tribunal not to hold regular trial in the manner as under section 166. Whether the vehicle was involved in the accident or not cannot be decided at the time of deciding final compensation. **V.U. More vs. S. D. Patil (1991) 3 SCC 530. SEE ALSO Surya Jyoti Devi vs. Krishna Kumar Singh 1997 (1) PLJR 912.**

Violation of terms and conditions of the Insurance Policy will not come in the way of granting of interim compensation **New India Assurance Company vs. Most. Janki Devi 1999 (1) PLJR 752**

The owner of the vehicle is liable to pay compensation and not the insurer if the vehicle was to be used for agriculture purpose but it is being used for commercial purpose at the time of accident. **National Insurance Co. Ltd. VS Hanif Sai and Others 2000 (2) PLJR 737**

Compensation under section 140 of Motor Vehicles Act, 1988 is interlocutory one and interim compensation is not payable if the application under section 166 of the Motor Vehicles Act, 1988 has been filed beyond time **Rambilas Singh vs. Bimli Devi 2001 (1) PLJR 709.**

The amount paid in interim compensation is to be deducted from the principal amount being finally paid. **Kaushnuma Begum Vs. New India Assurance Company Ltd. (2001) 2 SCC 9**

Right to Claim Compensation on the basis of no fault liability is in addition to right to claim compensation on basis of fault liability **The Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala WITH National Insurance Co. Ltd., v. Rana Govind Ayyar and others, AIR 2001 S.C 1832: (2001) 5 SCC 175 see also Deepal Girishbhai Soni and others Vs. United India Insurance Company 2004 AIR SCW 1864 AIR 2004 SUPREME COURT 2107**

No fault liability payment cannot be denied where the factum of insurance of the vehicle not denied the Insurance Company cannot raise the objection that the vehicle in question was not involved in the accident. **The Branch Manager Oriental Insurance Company vs. Asha Devi 2006 (1) PLJR 597**

### **INSURANCE CLAIM**

Simply lodging of the First Information Report, and after investigation the same landed in the Final Form, the burden heavily falls on the Insured to prove the factum of the Damage **M/s Tata Nagar Metal Industries Vs. New India Assurance Co. Ltd . 1999 (1) BLJR 30.**

### **ISSUE OF POLICY PAPERS**

A policy is issued after the acceptance of the proposal; first premium for insurance and it has to be honoured by the Company as the contract for insurance is accepted. **R.Ratilal & Co.vs. National Security Assurance Co. Ltd. AIR 1964 SC 1396.**

Once the insured has issued a certificate of insurance the insurer has to satisfy any decree of a claim arising out of the insured vehicle. **Guru Govekar vs. Filomena F. Lobo (1988) 3 SCC 1**

When a policy is taken on a particular date, its effectiveness is from the commencement of that date. The

Insurance Policy obtained on the date of the accident became operative from the commencement of the date of insurance i.e. from the previous mid night and since the accident took place on the date of the policy the insurer became liable. **New India Assurance Co.Ltd. Vs. Ram Dayal & others (1990) 2 SCC 680**

### **JOINT TORTFEASER**

Taxi came in collision with train Joint tortfeasor - Claim against joint tortfeasor to pay compensation - Tenable before Motor Vehicle Claims Tribunal. **Union of India Appellant v. Bhagwati Prasad (D) and others AIR 2002 SUPREME COURT 1301**

Accident due to collision between railways and bus at unmanned level crossing and railway also found negligent due to non-exercise of duties under Railways Act, an award for compensation could be passed against Railways by the claims Tribunal under Motor Vehicles Act **Union of India Appellant v. United India Insurance Co. Ltd. and others AIR 1998 SUPREME COURT 640**

### **JURISDICTION OF THE TRIBUNAL**

Claims Tribunal cannot have jurisdiction until its formation is not published in the Gazette Bihar Co operative **Motor Vehicle Insurance Society vs. Rameshwar Raut AIR 1970 Pat 172**

An accident by an uninsured vehicle doesnot take away the jurisdiction of the tribunal to entertain a claim petition for compensation **Parmanand Thakur vs. Commissioner Coal Mines AIR 1988 Pat 156. see also Mantoo Sarkar Oriental Insurance Company (2009) 2 SCC 244 see also Malati Sardar Vs. National Insurance Company Limited and Ors. AIR2016SC247**

The cause of action in the present case arose within the territorial jurisdiction of Nepal and if that be so, any claim against the appellant Insurance Company could be brought only in Nepal and not in any court in India merely because the person so dead belongs to India or that the Bus was registered in India. **Oriental Insurance Company Ltd. Vs. Anarwa Devi & Ors Decided on : 05-10-2012 MANU/BH/0585/2012 : (2013) ACJ 1807**

### **JUST COMPENSATION**

Though the claimants had claimed a total compensation of Rs.25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. **There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation".** The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty bound to award just compensation. (See the judgments of this Court in the cases of (a) Nagappa v. Gurudayal Singh, [\(2003\) 2 SCC 274](#) (b) **Magma General Insurance v. Nanu Ram, (2018) SCC Online SC 1546 (Civil Appeal No. 9581 of 2018, decided on 18.09.2018)** (c) **Ibrahim v. Raju, (2011) 10 SCC 634**). **Ramla and others Versus National Insurance Company Limited and others 2018 0 Supreme(SC) 1186; AIR 2019 SUPREME COURT 404**

Courts and Tribunals should take liberal approach since law values life and limb in free country in generous scale. **AIR 2013 SUPREME COURT 2629 "S. Manickam v. Metropolitan Transport Corp. Ltd."**

Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation

which appears to be just." However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards. **2009 AIR SCW 493 "Syed Basheer Ahamed v. Mohd. Jameel"**

At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable **AIR 2010 SUPREME COURT 3741**

The power of the courts in awarding reasonable compensation was emphasized by this Court in **Nagappa vs. Gurudayal Singh & Ors. [(2003) 2 SCC 274]**,

As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation. **Oriental Insurance Company Ltd. vs. Mohd. Nasir & Anr. [(2009) 6 SCC 280]**, and **Ningamma & Anr. vs. United India Insurance Company Ltd. [(2009) 13 SCC 710]**. See Also **Jitendra Khimshankar Trivedi & Ors. Versus Kasam Daud Kumbhar 2015 4 SCC 237;**

### **LIABILITY OF INSURER**

Death of truck driver in motor accident - Vehicle insured on date of accident - Insurer's liability to pay third party compensation only as the policy continues even if the vehicle stood transferred to another. **Firdaus v. Oriental Insurance Co. Ltd and Ors. AIR 2017 SUPREME COURT 3572.**

Gumasthe (clerical cadre) the deceased would be covered by the expression "persons employed in connection with operation of motor vehicle." The operation of the aforesaid clause has wrongly been restricted and limited only to persons employed in connection with loading/unloading of the motor vehicle. **Hanumanagouda v. United India Insurance Co. Ltd and Ors. etc AIR 2015 SUPREME COURT 1467**

The statutory benefit of insurance of third party cannot be extended to the owner of the vehicle when injured or dies in the accident. **New India Assurance Company Ltd. Vs. Prabha Devi AIR 2013 SC (Supp) 235**

Liability of insurer - Accident involving Maxi Cab and cycle - Driver of Maxi Cab holding valid licence to drive light motor vehicle - But did not have endorsement to drive Maxi Cab - Mere absence of endorsement does not exonerate insurer of its statutory liability to pay compensation. **AIR 2013 SUPREME COURT 2262 "S. Iyyapan v. United India Insurance Company Ltd"**

The statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorized agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy. **AIR 2013 SUPREME COURT 1125 "Sanjeev Kumar Samrat v.**



## **National Insurance Co. Ltd."**

WORKMEN'S COMPENSATION - **Liability of insurer** - Claimant travelling as spare driver in goods vehicle - Was not driving accident vehicle - In fact was employed as driver on other vehicle - And was travelling only in pursuance of direction of employer to visit work site - Claimant even though travelling in cabin is no more than gratuitous passenger - Insurance Company not liable to pay compensation - Insurer also not liable under proviso to S. 147(1) as claimant who was admittedly not driving vehicle could not be said to have suffered injury in course of his employment. **AIR 2013 SUPREME COURT 1064 "Manager, National Insurance Co. Ltd. v. Saju P. Paul"**

Compensation payable to the employee of owner of vehicle that caused accident cannot be restricted merely to one under the Workmen's Compensation Act and it can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy. The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Motor Vehicles Act. But that cannot bind the parties or prohibit from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of the claimant/deceased cleaner of the vehicle is concerned, the same cannot be restricted to the compensation under the Workmen's Compensation Act and is entitled to compensation even under the Motor Vehicles Act which will depend upon the terms and conditions of the policy of insurance. **AIR 2013 SUPREME COURT 2561 "Ramchandra v. Regional Manager, United India Insurance Co. Ltd."**

In any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

- i. The vehicle was not driven by a named person,
- ii. It was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. **AIR 2013 SUPREME COURT 2262 "S. Iyyapan v. United India Insurance Company Ltd"**

Comprehensive policy - Vehicle taken on hire by person, meeting with accident during subsistence of policy - Such use was not permitted under policy - Insurance company cannot repudiate its claim in toto in such case in view of guidelines issued by it - Insurance company directed to pay consolidated sum of 50% of claim made by complainant owner of vehicle. **2010 AIR SCW 2666 "Amalendu Sahu v. Oriental Insurance Co. Ltd." : (2010)4SCC536,**

WORKMEN'S COMPENSATION - MOTOR VEHICLES - INSURANCE - Liability of insurance company - Injury caused by or arising out of use of motor vehicle - Workmen engaged in unloading food grains from tractor - Climbing down grocery pit to clean it - Falling down in pit and dying of suffocation - Death has no connection with use of motor vehicle - Insurer cannot be held liable to pay compensation. **2010 AIR SCW 5872 "Mamtaj Bi Bapusab Nadaf v. United India Insurance Co." (2010)10SCC536**

Premium amount was received in cash by insurer - Money receipt showed that it contained column relating

to "Class Code" and also "cover note number" - Cover note remains valid till it is cancelled - Finding of fact that cover note was not cancelled prior to deposit of premium in cash by owner but only after accident - Insurer was liable to reimburse third party claim. **AIR 2009 SC (Supp) 961 "National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela"**

In the instant case the entire stand of the insurance company is that claimant has used the vehicle for hire and in the course of that there has been an accident. Following the aforesaid guidelines, this Court is of the opinion that the insurance company cannot repudiate the claim in toto. For the reasons stated, we cannot affirm the order of the fora below. We direct the respondent insurance company to pay a consolidated sum of Rs.2,50,000/-**AIR 2010 SUPREME COURT 2090 "Amalendu Sahu v. Oriental Insurance Co. Ltd."**

In a case of collusion of two vehicles, if one vehicle is found not negligent, but the negligent vehicle not insured the liability cannot be thrown on the insurers of the other insured vehicle compensation payable by the owners of the erring vehicle **New India Assurance Company Ltd. Vs. Bismillah Bai (2009) 5 SCC 112**

Car in question at time of accident was requisitioned by Magistrate for assembly elections - Being requisitioned by statutory authority, owner had no other alternative but to handover possession - Once possession is handed over, owner cannot exercise any control thereupon - State shall be, therefore, liable to pay compensation and not registered owner of car. **AIR 2008 SUPREME COURT 735 "National Insurance Co. v. Deepa Devi"**

The ingredients for maintaining a proceeding under 1988 Act and 1923 Act are different. The purpose for which a contract of insurance is entered into may be different, whereas under 1988 Act, a contract of insurance would be mandatory; for the purpose of applicability of the 1923 Act, it will be optional and even contracting out is permissible, as under the 1923 Act, the liability of the insurer is limited to the claim of the workman. **AIR 2007 SUPREME COURT 2907 "Gottumukkala Appala Narasimha Raju v. National Insurance Company Ltd."**

It is the specific case of the claimants that on 30.11.2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. **AIR 2009 SUPREME COURT 2019 "Mallikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Co. Ltd."**

**Section 157 and 103** – Accident vehicle covered by subsisting insurance policy – Transfer of vehicle from registered owner to present owner-employer proved before Commissioner, Workmen Compensation – Insurance policy deemed to be in the name of present owner – All benefits under Insurance policy available to present owner – This is irrespective of the notice to the Insurance Company u/s 103 – **[2014] 3 Supreme 32 / [2014] 2 JLJR(SC) 382 Mallamma (Dead) By L.Rs. Vs. National Insurance Co. Ltd.**

### **LIABILITY OF OWNER**

Section 2(30) – Appellant financier – Recorded as registered owner – hirer taking the vehicle without paying full premium for insurance – Vehicle not insured – Financier not knowing about non-insurance – hirer in control and possession of vehicle at time of accident – No liability can be fastened on the financier. **HDFC Bank Ltd v. Kumari Reshma and Ors. AIR 2015 SUPREME COURT 290**

Transfer of ownership of vehicle prior to accident - But neither transferor nor transferee took any step for change of name of owner in certificate of registration - In view of said omission, transferor must be deemed

to continue as owner of vehicle for purposes of Act even though under civil law he would cease to be owner after sale of vehicle - Liable to pay compensation. **AIR 2011 SUPREME COURT 682 "Pushpa v. Shakuntala"**

Driving without licence - Minor driving motorcycle - Hit a scooter - Liability to pay compensation shifts on owner of motorcycle - Since it was duty of owner to ensure that his motorcycle was not misused - Defence by owner that keys of motorcycle were taken by minor without his knowledge held, not probable. **AIR 2011 SUPREME COURT 2436 "Jawahar Singh v. Bala Jain"**

Insurance Company - Liability - Car of company used by deceased, occupant, for company business at time of accident - Insurance Company not liable to indemnify owner of car, company, insured, in respect of death of deceased. **"Oriental Insurance Co. Ltd. v. Meena Variyal" AIR 2007 S. C. 1609 (2007) 5 SCC 428**

Tractor was insured only for carrying out agricultural work which would not include digging of earth and taking it in trolley to brick kiln - Respondent being mere passenger and not owner or driver, his claim petition could not have been allowed **Oriental Insurance Co. Ltd. v. Brij Mohan" AIR 2007 S.C. 1971 : (2007) 7 SCC 56**

Comprehensive Insurance policy means loss sustained will be payable up to the insured amount irrespective of the loss amount., IF PREMIUM OF KHALASI NOT PAID HE CANNOT BE COVERED AS A THIRD PARTY. **Ramashray Singh Vs. New India Assurance Company 2003 AIR SCW 3601: (2003) 10 SCC 664 : 2003 (3) PLJR 176 (SC)**

Insurance Company not liable to pay compensation for death of passengers traveling in goods Vehicle. **Oriental Insurance Company Vs. Devireddy Konda Reddy and others 2003 AIR SCW 513 : Oriental Insurance Company Vs. Jogi Subbamma and others 2003 AIR SCW 513 : (2003) 2 SCC 339**

The employer becomes liable to the compensation as soon as the injury was caused and there is no suspension of employer's liability pending settlement. Insurance Company Liable to pay the claim raised under the Workmen Compensation Act. **Pratap Narain Singh Deo vs. Shrinivas Sabata (1976) 1 SCC 289 see also United India Insurance Company Vs. Suresh K.K. (2008) 12 SCC657 : AIR 2008 SC 2871**

Liability of the Insurance Company will start when the policy becomes operative i.e. on the date and time the premium is paid. **National Insurance Co. Ltd. Jikubhai Nathuji Dabhi (1997) 1 SCC 66. see also National Insurance Co. Ltd. Vs. Sobina Lakai ( 2007) 7 SCC 786 ; J. Kalaivani Vs. K. Sivashankar ( 2007) 7 SCC 792**

For the settlement of the policy the Insurance Company must produce the policy for doing justice **National Insurance Company vs. Jugal Kishore (1988) 1 SCC 626.**

Liability of Insurance Company is to the extent for which vehicle is insured. Deceased travelling on the roof of the bus. Insurance Company cannot be made liable to pay compensation beyond a statutory limit. **New India Assurance Company Ltd. vs. Smt. Shanti Bai. (1995) 2 BLJR 729. See also National Insurance Company vs. Mahendra Prasad 1997 (1) PLJR 907, Krishna Kumar Agrawal Vs. Most. Komiya Devi .1999(1) P.L.J.R. 870**

Breach of policy the terms of the policy conditions by carrying humans in a goods vehicle more than the permitted number cannot be said to be such fundamental breach so as to afford ground to the insurer to indemnification unless there were some factors contributing to the cause of such accident. **B.V.Nagaraju vs. Oriental Insurance Company (1996) 4 SCC 647.**

Comprehensive insurance policy 'any person' would include gratuitous passenger **AMRITLAL SOOD AND ANOTHER Vs. KAUSHALYA DEVI THAPAR AND OTHERS AIR 1998- SC 1433 \ 1998-SCC-3-744**

Liability of Insurer: Gratuitous passenger - Whether excluded from risk: under the new Act third party risk does not exclude for gratuitous passenger **New India Assurance Company Vs. Shri Satpal Singh & Ors. AIR 1999- (SCW)-0-4337 \ 1999-JT-9-416 : 2000 ACJ 1(Over Ruled)** Now holds that gratuitous passenger cannot be excluded after the 1994 amendment of the Motor Vehicles Act, 1988 **New India Assurance Co. Vs. Asha Rani 2002 AIR SCW 5259** see also "**Ramesh Kumar v. National Insurance Co. Ltd.**" **AIR 2001 S C 3363**

Liability of the Insurance Company cannot be taken away even though the vehicle was not driven by a proper licensed persons as the liability will be of the owner and the owner is insured by the Insurance Company thus both liable. **SOHAN LAL PASSI VS. P. SESH REDDY (1996) 5 SCC 21: 1996 (2) ALL PLR 226(SC)**

Insurer's liability would depend upon the terms of the policy. **United India Insurance Company VS. M.K.J. Corporation (1996) 6 SCC 428.**

A person dying or getting injured while alighting from a public service vehicle carrying passengers for hire or reward or pursuant to a contract of employment cannot be treated as a third party rather he must be considered as a passenger and the liability must be covered under section 147 of the Motor Vehicles Act. **Noorjahan (TMT) VS. Sultan Rajia Alias Thaju And Others (1997) 1 SCC 6.**

Liability of the Insurance Company will start when the policy becomes operative i.e. on the date and time the premium is paid. **National Insurance Co. Ltd. Jikubhai Nathuji Dabhi (1997) 1 SCC 66. See also Oriental Insurance Company vs. Sunita Rathi AIR 1998 SC 257 , NEW INDIA ASSURANCE CO. LTD. Vs. SMT. SITA BAI & ORS. (1999)-7 SCC--575 -AIR \ 1999 (SCW)-0-3586**

Liability of the Insurance Company will start, if time is not given it becomes operative from mid night **New India Assurance Company Ltd. vs. Ram Dayal (1990) 2 SCC 680.**

The employer becomes liable to the compensation as soon as the injury was caused and there is no suspension of employer's liability pending settlement. Insurance Company Liable to pay the claim raised under the Workmen Compensation Act. **Pratap Narain Singh Deo vs. Shrinivas Sabata (1976) 1 SCC 289.**

Compensation for motor accident resulting to total disability see **R.D.Hattangadi vs. Pest Control (India) Pvt. (1995) 1 SCC 551.; Ashwani Kr. Mishra vs. P. Muniam Babu and others (1999) 4 SCC 22; Nagappa Vs. Gurudayal Singh 2002 AIR SCW 5348**

Even though there is no insurance for damage of third party property Insurance Company will still be liable to pay the statutory amount of Rs. 6000 only as provided under section 147 (2) of the Motor Vehicles Act. **The Manager Oriental Insurance Company Ltd. vs. Mostt. Chameli Devi 1997 (1) PLJR 1010.**

There is no material on record to show before the tribunal that the vehicle was being driven by a regular licensed holder, tribunal rightly refused the liability of the Insurance Company **Lala Satya Narain Prasad vs. Shri Laldeo Singh 1997 (1) PLJR 911.**

The insured cannot claim anything more than what is covered under the insurance policy, insurance policy covers only those goods which were permissible to be carried under the Motor Vehicle Act, 1988 by the goods carriage. Table III to Rules 137 of the Central Motor Vehicles Rules, 1988 describes hazardous goods, which are not to carried by the goods vehicle. **Oriental Insurance Company Ltd. Vs. Sony Cheriyan**

**(1999) 6 SCC 451.**

If the driver of the insured vehicle is murdered while on duty the insurance company is liable to pay towards compensation under the Workmen Compensation Act but the penalty has to be paid by the owner. **National Insurance Co.Ltd. VS Presiding Officer Labour Court 2000 (2) PLJR 806: 2000 ACJ 343**

Financier, even though registered as owner, does not become in control and possession of the vehicle – Borrower if in control and possession and driving without statutory insurance will be liable. **HDFC Bank Ltd. Versus Kumari Reshma and Ors. –2015 0 AIR(SC) 290; 2015 2 JLJR(SC) 9; 2015 2 PLJR(SC) 283;**

## **LIMITED LIABILITY**

Limit of liability with regard to third party risk doesnot become unlimited higher than the statutory liability even after the issuance of comprehensive policy on the Estimated value of the vehicle. The fact that the insurance policy is comprehensive is of no consequence. For an unlimited third party risk cover specific agreement and payment of separate premium is necessary .**New India Assurance Company Vs. C.M. Jaya (2002) 2 SCC 278 : 2002 (2)PLJR 200 (SC) ; Jai Singh vs. Lal Muni Devi 2000 (4) PLJR 231: AIR 2000 Pat 187 ; New India Assurance Co. Ltd. vs. Shanti Bai (1995) 2 SCC 539 : AIR 1995 SC 1113 see also National Insurance Company vs. Jugal Kishore (1988) 1 SCC 626, Radhey Shyam Prasad vs.Kripa Tiwari 1997 (1) PLJR 918; New India Assurance Company vs. Most. Sapuran Devi Devi 2000 (4) PLJR 54; New India Assurance Company vs. Dr. Madan Kumar Sinha 2001 (1) PLJR 25. (SECTION 147 OF MOTOR VEHICLES ACT)**

C.M. Jaya (2002) 2 SCC 278 : 2002 (2)PLJR 200 (SC) binding in all cases relating to limited liability **D.M. Oriental Insurance Company Vs. Most. Jaishree Verma 2005 (3) PLJR 738. see also Sardar Jai Singh Chawala Vs. Raksakhi Devi 2006 (1) PLJR 630**

Limited Liability means that the loss sustained will be payable up to the insured amount **Ramasharay Singh Vs. New India Assurance Company AIR 2003 SCW 3601: AIR 2003 SC 2877**

The term of the policy and the premium paid showing the liability of the insurer fixed at Rs 50,000. Award of compensation more than the said sum is not permissible **National Insurance Company Vs. Keshav Bahadur and others 2004 AIR SCW 737**

## **LIMITATION**

Limitation of six months prescribed in section 166 (3) has been repealed by an amendment in the Motor Vehicle Act. Thus claims dismissed on the grounds of limitation have to be restored and decided on merit. **Dasarath Prasad vs. Catholic Charities Daltonganj (1996) 1 BLJR 444. see also Dhannalal vs. D.P. Vijayvargiya and others (1996) 4 SCC 652. ; New India Assurance Company Vs. C.Padma (2003) 7 SCC 713**

Policy conditions carrying a provision that a claim if not claimed within the specified period as mentioned in the policy the claim would stand extinguished even though the period specified is shorter than the period of limitation provided in the Limitation Act, 1963 **Himachal Pradesh State Forest Company Ltd. Vs. United India Insurance Company (2009) 2 SCC 252 see also National Insurance Company Ltd. Vs. Sujir Ganesh Nayak & Co. (1997) 4 SCC 366: The New India Assurance Co.Ltd. Vs. B.N. Sainani (1997) 6 SCC 383.**

Claim raised after the specified period for raising claim as mentioned in the policy , policy allowed to expiry

, High Court cannot direct the Insurance Company to make payment after expiry of the policy **Smt. Lilawati Devi Vs. The State of Bihar and others . 1998 (2) PLJR 693.**

We are of the considered view, that a claim raised before the Motor Accident Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accident Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time. The question of reasonability would naturally depend on the facts and circumstances of each case. for approaching the Motor Accident Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from paragraph 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Paragraph 4 aforementioned is extracted hereunder:-

“4. That the Petitioners are poor person and they have no knowledge about the Law. Also the Respondent has not pay the single pie towards any compensation.”

In view of the reasons recorded hereinabove, we hereby set aside the impugned order and allow the instant appeal, by holding, that the claim raised by the respondents before the Motor Accident Claims Tribunal, was not a surviving claim, when the respondents approached the said Tribunal. **M/s. Purohit & Company Versus Khatoonbee & Anr. 2017 0 Supreme(SC) 254; AIR 2017 SUPREME COURT 1612**

After going through the aforesaid settled principles in M/s. Purohit's case, the claim preferred, after more than 13 years, in the present case, cannot be considered to be within a reasonable period nor the claim can be said to be a genuine claim in the sense that the claim was a live and surviving claim. **MOST. GYATRI DEVI Vs. KAMESHWAR PRASAD (2019) 1 PLJR 652**

## **LOK ADALAT**

When a case is referred to the Lok Adalat for settlement, two courses are open to it a) (a) if a compromise or a settlement is arrived at between then parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the Lok Adalat, has the force of a decree); or (b) if there is no compromise or settlement, to return the record with a failure report to the court. There can be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle the case in terms of such directions. In fact, there cannot be an ‘award’ when there is no settlement. Nor can there be any ‘directions’ by the Lok Adalat determining the rights/obligations/title of parties, when there is no settlement. The settlement should precede the award and not vice versa. When the Lok Adalat records the minutes of a proceeding referring to certain terms and directs the parties to draw a compromise deed or a memorandum of settlement and file it before the court, it means that there is no final or concluded settlement and the Lok Adalat is only making tentative suggestions for settlement; and such a proceeding recorded by the Lok Adalat, even if it is termed as an ‘award’, is not an ‘award of the Lok Adalat’. **B. P. Moideen Sevamandir & Anr. Vs..A. M. Kutty Hassan (2009) 2 SCC 198**

The Lok Adalat cannot dispose of the petition if no settlement or compromise is reached at **State Of Punjab Vs. Phulan Rani 2004 AIRSCW 4527 see also State Of Punjab Vs. Ganpat Raj 2006 AIRSCW 4585 ; State of Punjab vs Jalour Singh 2008 AIR SCW 1196; Oriental Insurance Company Vs. State of Bihar 2008 (4) BLJ 278 see also United India Insurance Company Vs. Ajay Sinha (2008) 7 SCC 454 : AIR 2008 SUPREME COURT 2398**

## MAINTAINABILITY OF CLAIM PETITION

Compensation payable to the employee of owner of vehicle that caused accident cannot be restricted merely to one under the Workmen's Compensation Act and it can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy. **AIR 2013 SUPREME COURT 2561 "Ramchandra v. Regional Manager, United India Insurance Co. Ltd."**

'Accident arising out of use of motor vehicle' - Petrol tanker falling on Kutcha ground and came to rest after being hit by rear left side of truck - After 4 hours tanker exploded due to petrol leakage resulting in death of persons gathered to collect petrol - Cannot be said to be an accident 'arising out of use of motor vehicle' - **AIR 2011 SUPREME COURT 666 "New India Assurance Co. Ltd. v. Yadu Sambhaji More"**

Claim for compensation - Remedy under Ss. 163A and S. 166 being final and independent of each other, claimant cannot pursue them simultaneously - Claim petition finally determined under S. 163A - Claimant would be precluded from proceeding further with petition filed under S. 166. **AIR 2011 SUPREME COURT 1138 "Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadhvi"**

## MINIMUM WAGE

- The Hon'ble Supreme Court in a series of judgment has held that "minimum wage as fixed by the government is to be taken into consideration, if there is no proof of earning. **Jakir Hussein vs . Sabir and Others 2015 7 SCC 252;**

## MOTOR VEHICLES ACT AND INDIAN PENAL CODE, 1860 -

M.V. Act, 1988 is a complete code in itself in so far as motor vehicles are concerned. [ National Insurance Co. Ltd. v. Annappa Irappa Nesaria, [\(2008\) 3 SCC 464](#) : (2008) 2 SCC (Cri) 99 : (2008) 1 SCC (Civ) 945; Gottumukkala Appala Narasimha Raju v. National Insurance Co. Ltd., [\(2007\) 13 SCC 446](#) : (2008) 2 SCC (L&S) 662] However, there is no bar under the M.V. Act or otherwise, to try and prosecute offences under the IPC for an offence relating to motor vehicle accidents. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

Offences under Chapter XIII of the MV Act are compoundable in nature in view of Section 208(3) of the MV Act, whereas offences under Section 279, 304 Part II and 304A IPC are not.

If the IPC gives way to the MV Act, and the provisions of CrPC succumb to the provisions of the MV Act as held by the High Court, then even cases of culpable homicide not amounting to murder, causing death, or grievous hurt, or simple hurt by rash and negligent driving, would become compoundable. Such an interpretation would have the consequence of letting an offender get away with a fine by pleading guilty, without having to face any prosecution for the offence committed. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

## MOTOR VEHICLE

A motor vehicle remains in the category of unascertained or future goods till its appropriation to the contract of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state. Only after getting certificate of registration the owner becomes entitled to enjoy the benefits of possession and can obtain required certificate of insurance in his name and meet other

requirements of law to use the motor vehicle at any public place **Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala v. M/s. K. T. C. Automobiles. AIR 2016 SUPREME COURT 805**

Motor vehicle in terms of **Section 2(28)** of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road,

Definition of motor vehicle takes within its ambit, a dumper and tractor. Tractor which is basically for agricultural purpose and a dumper is used in the factory premises, can suitably be adapted for being used on the road, therefore, they will meet the requirement of definition of motor vehicle under Section 2(28) of the Act. The word only used in Section 2(28) of the Act clearly shows that the exemption is confined only to those kinds of vehicles which are exclusively being used in a factory or in any closed premises. Thus, a vehicle which is not adapted for use upon the road, is only to be excluded. (Para 28) **AIR 2013 SUPREME COURT 2150 "Chairman, R. S. R. T. Corporation v. Santosh"**

**S.2(24) Motor Vehicle - Jugaad - Is motor vehicle -** Can be plied only after meeting requirements of law. Jugaad is covered in the definition of the motor vehicles under Section 2(28) of the Act, the statutory authorities cannot therefore escape from their duty to enforce the law and restrain the plying of Jugaad. The statutory authorities must ensure that Jugaad can be plied only after meeting the requirements of the Act. Jugaad has become a menace to public safety as they are causing a very large number of accidents. Jugaads are not insured and the owners of the Jugaad generally do not have the financial capacity to pay compensation to persons who suffer disablement and to dependents of those, who lose life. Thus, considering the gravity of the circumstances, the statutory authorities must give strict adherence to the circular issued by Ministry of Shipping, Road Transport and Highway **AIR 2013 SUPREME COURT 2150 "Chairman, R. S. R. T. Corporation v. Santosh"**

#### **MULTIPLIER**

The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation. **SHRI NAGAR MAL AND ORS VERSUS THE ORIENTAL INSURANCE COMPANY LTD. AND ORS AIR 2018 SUPREME COURT 568 : 2018 0 Supreme (SC) 44; 2018(1) BLJ 159 (SC); see also RAMRAO LALA BORSE AND ANR VERSUS NEW INDIA ASSURANCE COMPANY LTD. AND ANR – AIR 2018 SUPREME COURT 657 : 2018 0 Supreme (SC) 45;**

In the case of Sarla Verma, (AIR 2009SC 3104: 2009 AIR SCW 4992) (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. **2012 AIR SCW 3901 "Amrit Bhanu Shali v. National Insurance Co. Ltd." see also AIR 2014 SC (Supp) 1004 "M. Mansoor Vs. United India Insurance Co. Ltd"**

If the deceased is un married and 50% has been deducted as personal expenses the multiplier will be in accordance to the age of the deceased **Sube Singh and Ors. Vs. Shyam Singh (dead) and Ors. MANU/SC/0106/2018**

Deceased was 28 years at time of accident - Amount of compensation payable to be determined by applying multiplier of 17. **2011 AIR SCW 6393 "Urmila v. Rashpal Kaur"**

Multiplier is determined by age of deceased and by calculation as to what capital sum, if invested at rate of interest appropriate to stable economy would yield multiplicand by way of annual interest **AIR 2009 SC**



**(Supp) 270 "Uttaranchal Transport Corpn. Ltd. Vs. Vimla Devi" see also M/S. Royal Sundaram Alliance Insurance Company Ltd. Vs. Mandala Yadagari Goud & Ors. 2019 0 Supreme (SC) 418 : AIR 2019 SUPREME COURT 1825**

Multiplier method is to be applied in cases of injuries also. **AIR 2010 SUPREME COURT 3741 "Yadava Kumar v. Divisional Manager, National Insurance Co. Ltd."**

Age of deceased was 56 years - Multiplier of 8 should have been used - High Court adopting multiplier of 11, improper **AIR 2011 SUPREME COURT 2838 "Oriental Insurance Co. Ltd. v. Vithabai"**

Victim was aged 29 years at time of accident - Multiplier of 16 should be applied in view of decision of Supreme Court in AIR 2009 SC 3104 **AIR 2011 SUPREME COURT 1234 "Kusum Lata v. Satbir"**

Age of deceased was not above 40 years on date of accident - Compensation should be calculated by applying multiplier of 16 as per Second Schedule. **AIR 2011 SUPREME COURT 1226 "Ravi v. Badrinarayan"**

Multiplier method - It involves ascertainment of loss of dependency or multiplicand - Choice of multiplier is determined by age of deceased and by calculation as to what capital sum would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. **AIR 2009 SUPREME COURT 2146 "Uttaranchal Transport Corpn. Ltd. v. Vimla Devi"**

Multiplier of 10 is applicable for the age of the deceased about 58 years **National Insurance Company Ltd. Vs. Meghji Naran Soratiya and others 2009 AIR SCW 2340**

Highest multiplier has to be for the age group of 21 years to 25 years **United India Insurance Company Vs. Bindu and others 2009 AIR SCW 1611**

Multiplier of 17 is to be given to a deceased of 35 years **Mohan Singh Vs. Kashi Bai and others 2009 AIR SCW 1664**

Multiplier - Determination - Age of accused or of claimant whichever is higher is relevant - Deceased aged 22 years - Claimant 55 years old - Selection of multiplier 8 is proper - Second schedule to act to be used as guide not as mathematical formula. **AIR 2008 SUPREME COURT 1233 "Ramesh Singh v. Satbir Singh"**

Though deceased was aged 25 years, considering age of his mother about 65 years and of father more than 65 years at relevant time - Multiplier of 5 would be appropriate - Compensation computed accordingly and reduced from Rs. 4,10,000/- to Rs. 2,10,000/- **AIR 2007 SUPREME COURT 2649 "New India Assurance Co. Ltd. v. Shanti Pathak"**

Method of multiplier explained maximum multiplier not to exceed from 12 to 16 times. General Manager Kerala State Road Transport Corporation **Trivandrum vs. Susamma Thomas and others (1994) 2 SCC 176** see also **Sarla Dixit vs Balwant Yadav & others ( 1996) 3 SCC 179. Sri Bulak Sao vs. Sri Ram Nath Prasad 1995 BBCJ 286.**

The maximum multiplier now not to exceed from 18 times and judgment given in **General Manager Kerala State Road Transport Corporation Trivandrum vs. Susamma Thomas and others (1994) 2 SCC 176 affirmed U.P. STATE ROAD TRANSPORT CORPORATION VS. TRILOK CHAND (1996) 4 SCC 362** see also **PUSHPA PANDEY & OTHERS VS. JANARDAN PD. SINGH (1996) 2 BLJR 1476. ADIKANDA SETHI VS.PALANI SWAMI SARAN TRANSPORT (18 TIMES GIVEN TO A**

**DECEASED OF 24 YEARS) (1997) 5 SCC 435 ; U.P. STATE ROAD TRANSPORT CORPORATION VS. Krishna Bala (2006) 6 SCC 249**

Multiplier of 18 is to be given even to persons of the age of 26 **State Of Haryana Vs. Jasbir Kaur (2003) 7 SCC 484 New India Assurance Company Vs. Charlie 2005 (2) PLJR 249 (SC)**

Multiplier given in the structured formula can be deviated from. If the multiplicand is higher, lower multiplier can be selected **United India Insurance Company Vs. Patricia Jean Mahajan 2002 AIR SCW 2920: U.P. STATE ROAD TRANSPORT CORPORATION VS. Krishna Bala (2006) 6 SCC 249**

While considering the multiplier it has to be kept in mind that such multiplier should be applied which would ensure a monthly income to the similar amount if the whole amount is kept in a fixed deposit so as the calculated quantum of compensation in money value should fetch the same amount of dependency to the claimants. As per **Most. Menna Devi Vs. The United India Insurance Company, 2002(2) P.L.J.R. 494 (D.B) Oriental Insurance Company Limited Vs. Nandini Devi, 1999(1) P.L.J.R. 287, Oriental Insurance Company Limited Vs. Shanti Devi, 1999(1) P.L.J.R. 400: National Insurance Company Limited vs. Kumari Anupma 1999 (1) PLJR 873 ; United India Insurance Co.Ltd. vs. Most. Meena Devi 2000 BRLJ 14 : 2000 (2) PLJR 820; Oriental Insurance Co.Ltd. vs. Most. Savitri Devi 2000 (4) PLJR 47 :2000 BRLJ 32 ; National Insurance Co. Ltd Vs. Surjit Kaur Devi 2000 (4) PLJR 109 : National Insurance Co. Ltd. Vs. Madhuri Kuer 2001 (1) PLJR 73; it is made clear that these case of Patna High Court has been decided on the principles laid down by Supreme Court in **General Manager, Kerala State Road Transport Corporation Vs. Sushma Thomas, A.I.R. 1994 S.C. 1631: (1994) 2 SCC 176:AND U.P. State Road Transport Corporation & others vs. Trilok Chandra & others (1996) 4 SCC 362. see also Jaya Pandey Vs. Nirmal Kumar Singh 2002 (3) PLJR 1; U.P. STATE ROAD TRANSPORT CORPORATION VS. Krishna Bala (2006) 6 SCC 249****

Where the Claimant is unmarried and the claimant is the mother, while deciding the claim on multiplier basis the age of the deceased is to be taken **M/S. ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LTD. VS.MANDALA YADAGARI GOUD & ORS.2019 0 Supreme(SC) 418; see also Mohammed Siddique and Anr. v. National Insurance Company Ltd. and Ors. AIR 2020 SUPREME COURT 520**

In cases where injuries not laid to permanent disability the award is to be given on a lump-sum amount instead of use of multiplier method. **New India Assurance Company VS Jainath Singh 2000 (2) PLJR 776.**

There is a difference between Annual Income and Annual Dependency. The multiplier should be selected at such a number, which on multiplying the annual dependency comes to such a sum, which if kept in bank or financial institutions the Annual Return meets the amount of annual dependency. **National Insurance Co.Ltd. VS Chandrawati Kuar 2000 (2) PLJR 832**

Age of the deceased 40 years multiplier of 9 is to be applied along with interest of 12% per annum. **United India Insurance Company vs. Mrs. Kanak Paul & Others. (1996) 1 BLJR 473.: 1996 (1) ALLPLR 294 ,this judgement stands affirmed in L.P.A. (1996) 2 BLJR 1242 see also United India Insurance Co.Ltd. vs. Most. Meena Devi 2000 BRLJ 14**

Age of the deceased 45 years multiplier of 8 is to be applied. The question of negligence has to be determined not only on basis of averment in the F.I.R. but also from the evidence deduced **United India Insurance Company vs. Smt. Susshila Devi (1995) 2 BLJR 1275**

The multiplier method cannot be used in death of minors, as they have no income. The quantum of

compensation has to be decided on lump sum basis considering the future prospect of the minor, standard and status of the family in the society and the upbringing of the minor by the parents. **C.K. Subramonia Iyer vs. T. Kunhikuttan Nair AIR 1970 SC 376 ( Para 14) ; Ram Surat Pandey & another vs. Smt. Indu Devi & another 1997 (1) PLJR 804 See also Executive Engineer P.H.E.D. (Mechanical) Dhanbad Division vs. Kameshwar Singh 1997 (1) PLJR 927, National Insurance Company vs. Smt. Phool Bharan Devi 1998 (2) PLJR 616; Oriental Insurance Company vs. Paspati Prasad And others 1998 (2) PLJR 617.**

The multiplier in cases under the old Act cannot be more than 16 times **Oriental Insurance Company Ltd. vs. Smt. Shayama Thakur 1999(1) PLJR 96.**

Higher multiplier is to be given to the age group of 21 to 25 **New India Assurance Company Vs. Charlie & others 2005 (2) PLJR 249** The Compensation on multiplier basis must be a just compensation and it should neither be a bonanza nor a source of profit **Divisional Controller KSRTC Vs. Mahadev Shetty (2003) 7 SCC 197. New India Assurance Company Vs. Charlie 2005 (2) PLJR 249 (SC) (2005) 10 SCC 720.**

## **MURDER**

A claim petition for compensation for the killing of the driver by miscreants is maintainable as it is covered under the definition of accident under the Motor Vehicles Act, 1988 **Rita Devi Vs. New India Assurance Company (2000) 5 SCC 113; 2001 (1) PLJR 30 (SC) See also National Insurance Company Vs. Sindhu Devi 2001 (1) PLJR 534; Oriental Insurance Company Vs. Archana Ranjan 2001(1) PLJR 163.(D.B); National Insurance Company Vs. Guriya Devi 2019 (3) BLJ 823; Shakuntala Devi Vs.Pushpa Ranjan 2019 (2) PLJR 493**

The death of the deceased was a murder simpliciter and as such it cannot be termed as a death or permanent disablement due to accident arising out of the use of **motor vehicle** entitling payment of compensation in terms of sec. 163-A of the Act. **Ranju Rani Alias Ranju Devi Versus Branch Manager, The New India Assurance Company Limited 2002 4 PLJR 341; 2002 0 Supreme(Pat) 1024;**

If the driver of the insured vehicle is murdered while on duty the insurance company is liable to pay towards compensation under the Workmen Compensation Act but the penalty has to be paid by the owner. **National Insurance Co.Ltd. VS Presiding Officer Labour Court 2000 (2) PLJR 806: 2000 ACJ 343**

## **NEGLIGENCE**

Claimants alleging that bus of respondent corporation was involved in accident with motorcycle of deceased - Mere involvement of bus of respondent corporation in accident - Cannot make respondent liable to pay compensation unless it is shown that accident was caused by rash and negligent act of bus driver. **AIR 2014 SC (Supp) 1218 "Lahoo Ram Vs. Himachal Road Transport Corpn"**

The petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of **the parents of the deceased to have established that respondent No.1 drove the vehicle in a rash and negligent manner which resulted in the fatal accident.** May be, in order to help respondent No.1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) and Ors. (AIR 2001 SC 485: 2001 AIR SCW 85) (Supra) would have come to the assistance of the claimants. **AIR 2012 SUPREME COURT 1918 "Surinder Kumar Arora v. Manoj Bisla"**

Person denying accident has to come forward to support his stand by getting himself examined as a witness  
**Krishan Gopal & another Vs. sandhya Devi and others 2009 AIR SCW 1473**

The question of negligence has to be determined not only on basis of averment in the F.I.R. but also from the evidence deduced **United India Insurance Company vs. Smt. Susshila Devi (1995) 2 BLJR 1275.**

When it is proved that the accident has occurred due to the negligence of the deceased driver's dependents not liable for compensation under the Motor Vehicles but can raise their claim under the Workmen's Compensation Act. **Oriental Insurance Company Ltd. vs. Most. Baidehi Devi 1997 (1) PLJR 827**

Motor cycle driven by two persons sitting on the rear seat. Mere this fact cannot lead to inference that there was negligence on the part of the motor cyclist only. Insurance Company can get benefit when conditions mentioned in section 149 (2) of the Motor Vehicle Act, 1988 is violated **New India Assurance Company Ltd. vs. Savitri Devi (1996) 1 BLJR 519: 1996 (1) ALLPLR 476.**

Negligence of the bus driver not in dispute proportion of the negligence will be of the ratio of 60% and 40%  
**Karnataka State Road Transport Corporation vs. K.V.Sakeena (1996) 3 SCC 446.**

Contributory negligence, negligence can be apportioned as 60% and 40%. Accordingly insurer liable to pay compensation of Rs.60,000. **Indrani Raja Durai & others vs. Madras Motor & General Insurance Company and Others (1996) 2 SCC 157.**

When composite negligence is there and when there is no scope of determination as to which of the vehicle was more liable than the ratio of liability is to be fixed at 50% each. **National Insurance Company vs. Malti Devi & others (1996) 2 BLJR 1239** ; seeing the road conditions of Bihar award for death falling from the roof of bus reduced by 30% **United India Insurance Co.Ltd. vs. Most. Nirmala Devi 2000 (4) PLJR 45 : 2000 BRLJ 30**

In order to succeed in a defense that the accident was due to a mechanical defect, the owners have to prove that they had taken all necessary precautions and kept the lorry in a roadworthy condition , and that the defect occurred in spite of the reasonable care and caution taken by the owners . **Minu B. Mehta v. Balakrishna Ramachandran Nayan. AIR 1977 SC 1248 : (1977) 2 SCC 441: (1978) 1 SCWR 141 : (1977) 2 SCR 886.**

**the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent No.1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. May be, in order to help respondent No.1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) and Ors. (AIR 2001 SC 485 : 2001 AIR SCW 85) (supra) would have come to the assistance of the claimants.**

#### **NOMINEE –**

Insurance amount received by nominee/wife - Such amounts constitute the entitlement of all legal heirs of deceased **Shreya Vidyarthi v. Ashok Vidyarthi and Ors. AIR 2016 SUPREME COURT 139**

#### **NOTIONAL INCOME**

The High Court relied upon the driving licence of the deceased and the training certificate of the deceased

issued by Bajaj Auto Limited and determined the notional income at Rs.10,000/- per month. Neither the driving licence nor the certificate could per se be made the basis to assume or infer that the deceased was gainfully employed at the relevant time and more so was earning income of Rs.10,000/- per month., the reason assigned by the High Court for enhancing the notional income of the deceased from Rs. 3000/- to Rs.10,000/- per month is irrational . No tangible logic has been assigned to discard the just finding recorded by the Tribunal in the backdrop of lack of evidence regarding the monthly income of the deceased **Rani & Ors. Versus National Insurance Company Ltd. & Ors. 2018 0 Supreme(SC) 746;**

### **OFFENCES UNDER THE M.V.ACT, 1988**

Chapter XIII of the M.V. Act, 1988 deals with “Offences, Penalties and Procedure”. It deals with offences relating to contraventions of the provisions of the M.V. Act, or any rule, regulation or notification made thereunder. It primarily deals with offences relating to licenses, driving of vehicles by unauthorized persons, control of traffic, maintenance of motor vehicles, using a vehicle in an unsafe condition, or without registration or permit, driving beyond speed limits, driving dangerously or driving by a drunken person, or by a person under the influence of drugs ETC.

The offences under Chapter XIII of the MV Act provide a summary procedure for disposal of cases, which are compoundable in nature under Section 208 (3) of the M.V. Act. Section 208(3) provides that if an accused pleads guilty and deposits the fine imposed, then “no further proceeding in respect of offence shall be taken against him nor shall he be liable, notwithstanding anything to the contrary contained in this Act, to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty”. **The State Of Arunachal Pradesh Versus Ramchandra Rabidas @ Ratan Rabidas & Anr. – 2019 0 Supreme(SC) 1132;**

offences under Chapter XIII of the MV Act are compoundable in nature in view of Section 208(3) of the MV Act, whereas offences under Section 279, 304 Part II and 304A IPC are not.

If the IPC gives way to the MV Act, and the provisions of CrPC succumb to the provisions of the MV Act as held by the High Court, then even cases of culpable homicide not amounting to murder, causing death, or grievous hurt, or simple hurt by rash and negligent driving, would become compoundable. Such an interpretation would have the consequence of letting an offender get away with a fine by pleading guilty, without having to face any prosecution for the offence committed.

The maximum imprisonment for a first time offence under Chapter XIII of the M.V. Act, is up to only six months; whereas the maximum imprisonment for a first time offence under the IPC in relation to road traffic offences can go upto 10 years under Section 304 Part II of the IPC. The sentence imposed by the courts should be commensurate with the seriousness of the offence, and should have a deterring effect on wrongdoers.[ State of Karnataka v. Sharanappa Basanagouda Aregoudar ([2002\) 3 SCC 738](#)] The punishment of offenders of motor vehicle accidents under the IPC is stricter and proportionate to the offence committed, as compared with the M.V. Act.

A prosecution, if otherwise maintainable, would lie both under the IPC and the MV Act, since both the statutes operate with full vigour, in their own independent spheres. Even assuming that some of the provisions of the MV Act and IPC are overlapping, it cannot be said that the offences under both the statutes are incompatible.

### **OVERLOADED STAGE CARRIAGE**

The liability under S. 147(2)(b) of the 1988 Act on the other hand, extends to third party. Liability of insurer - Extent - Overloaded stage carriage involved in accident - Liability of insurer would only be limited to number of passengers permitted to be carried in vehicle - Even S. 149 cannot bind insurer to pay amount

outside contract of insurance. **AIR 2007 SUPREME COURT 2870 "National Insurance Co. Ltd. v. Anjana Shyam"= 2007 AIR SCW 5237 : (2007) 7 SCC 445**

### **OWNER**

For the purposes of the Act, the person whose name is reflected in the records of the registering authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled. **Naveen Kumar Versus Vijay Kumar & Ors. AIR 2018 SUPREME COURT 983 : 2018 0 Supreme (SC) 115;**

Owner - Meaning of - The expression 'owner' includes the person in actual possession and control of the vehicle - Such person shall be vicariously liable for compensation for tort committed by the driver.

The definition of the owner under Section 2(19) of the Act is not exhaustive. It has, therefore to be construed, in a wider sense, in the facts and circumstances of a given case.

The expression owner must include, in a given case, **the person who has the actual possession and control of the vehicle** and under whose directions and commands the driver is obliged to operate the bus.

To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer, not be proper for the purpose of fastening of liability in case of an accident. The liability of the 'owner' is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident **RAJASTHAN STATE ROAD TRANSPORT CORPORATION Vs. KAILASH NATH KOTHARI AND OTHER ETC. AIR 1997 SC 3444**

Section 2(30) – Vehicle under hypothecation – Financier, though registered as owner,– Borrower if in control and possession and driving without statutory insurance will be liable for payment of compensation if any **Purnya Kala Devi v. State of Assam and 2014 (4) SCALE 586 see also Central Bank of India v. Jagbir Singh AIR 2015 SUPREME COURT 2070**

The person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted to the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control **HDFC Bank Ltd. Vs. Kumari Reshma [2014] 14 SCC142**

### **OWNERS LIABILITY**

The purchaser as an 'owner' under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of Insurance **Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala v. M/s. K. T. C. Automobiles. AIR 2016 SUPREME COURT 805**

Motor Vehicles Act, 1988 - Sections 2(30), 166 and 168 - Owner of vehicle - Financier - If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, will be vicariously liable for the tort committed by the employee - Vehicle not in actual control of financier - Held that the Financier is not liable to pay the compensation. **GODAVARI FINANCE CO. Vs. DEGALA SATYANARAYANAMMA AND OTHERS AIR 2008 SC 2493**

### **OWNER NOT THIRD PARTY**

**Dhanraj Vs. New India Assurance Company and others (2004) 8 SCC 553: AIR 2004 SUPREME**

**COURT 4767** it has been held that the owner of the vehicle does not come within the definition of third party and the insurance policy does not require an insurance company to assume risk of the owner the vehicle. See also **United India Insurance Company Vs. Davinder Singh (2007) 8 SCC 698 ; Oriental Insurance Company Vs. Rajni Devi and others (2008) 5 SCC 736**

Insurance of motor vehicle - Construction of insurance policy - Firm's vehicle driven by partner - Vehicle can be said to be driven by firm i.e. insurer itself. **AIR 1985 SUPREME COURT 1281 "Narchinva V. Kamat v. Alfredo Antonio Deo Martins"**

wherein, **the son of the owner was driving the vehicle**, who died in the accident, was not regarded as third party. In the said case the court held that neither Section 163-A nor Section 166 would be applicable. **New India Assurance Company Limited vs. Sadanand Mukhi and Others, (2009) 2 SCC 417,; AIR 2009 SC 1788**

**Deceased driving motor vehicle after borrowing it from real owner** - Thus he stepped into shoes of owner of vehicle - His L.Rs. could not claim compensation u/S.163-A. **AIR 2009 SUPREME COURT 3056 "Ningamma v. United India Insurance Co. Ltd." See also National Insurance Vs. Sanjay Sahay 2017 (4) BLJ 177 : 2018 (2) PLJR 359**

It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. **NATIONAL INSURANCE CO. LTD.VERSUS ASHALATA BHOWMIK AND ORS. AIR 2018 SUPREME COURT 4133 : 2018 0 Supreme (SC) 858; RAMKHILADI AND ANOTHER Vs. THE UNITED INDIA INSURANCE COMPANY AND ANOTHER** Civil Appeal No. 9393 of 2019 Decided on : 07-01-2020 (SC) **AIR 2020 (SC) 527 : (2020) 1 JLJR 272 : (2020) 1 PLJR 316**

The deceased was the victim of his own action of rash and negligent driving. A Claimant, , cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LR's of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act. **NATIONAL INSURANCE CO. LTD. VERSUS ASHALATA BHOWMIK AND ORS. 2018 0 Supreme(SC) 858; see also United India Insurance Company Ltd Versus Sumitra Devi M. A. No.674 of 2013 disposed of on 29-01-2019 ; United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

### **PERMANENT DISABILITY**

Defined under defined under sec. 142 of the Act. Sec.142 reads thus:

"142. Permanent disablement.-For the purposes of this Chapter permanent disablement of a person shall be deemed to have resulted from an accident of the" nature referred to in subsection (1) of Sec.140 if such person has suffered by reason of the accident any injury or injuries involving:-

- (a) Permanent privation of the sight of either eye or the hearing of either ear or privation of any member of joint; or
- (b) Destruction or permanent impairing of the powers of any member of joint; or

(c) Permanent disfiguration of the head or face."

The report of the Medical Board is also not clear that the appellant suffered any permanent disability. The decision relied -on by the learned counsel for the appellant does not help the appellant as in all those cases there was permanent disablement So, the Tribunal was justified in not granting interim compensation.

**Pradeep Rajak Versus Divisional Manager, Oriental Insurance Company 2007 2 PLJR 66; See also Divisional Manager, National Insurance Company Limited Versus Abhishek Kumar & Others 2004 3 PLJR 328**

## **PAY AND RECOVER**

Use of vehicle in public place **without permit** is fundamental statutory infraction - Pay and recover principle applicable **Amrit Paul Singh and Anr. v. TATA AIG General Insurance Co. Ltd and Ors. AIR 2018 SUPREME COURT 2662**

Principle of, 'pay and recover'- Deceased travelling as '**gratuitous passenger**' not covered under insurance policy - Insurer directed to pay amount of compensation to claimants and recover same from insured. **Manuara Khatun and Ors. v. Rajesh Kr. Singh and Ors AIR 2017 SUPREME COURT 1204 see also Anu Bhanvara Etc. v. IFFCO Tokio General Insurance Company Limited and Ors. AIR 2019 SUPREME COURT 3934**

**Driver of vehicle not possessing valid driving licence** Even if insurer is not held liable, it may be directed to pay compensation and recover it from the owner **SHAMANNA AND ANOTHER Versus THE DIVISIONAL MANAGER THE ORIENTAL INSURANCE CO. LTD. AND ORS. AIR 2018 (SC) 3726 SEE ALSO Parminder Singh v. New India Assurance Co. Ltd. and Ors. AIR 2019 SUPREME COURT 3128**

**If the owner driving the vehicle himself without valid driving licence** thus it was within his knowledge thus the order of pay and recover cannot be passed **United India Insurance Company Vs. Most. Kaili Devi 2019 (2) PLJR 552**

No evidence adduced to show that claimant would have difficulty in recovering sum awarded from insured - Insurer cannot be directed to pay entire compensation and subsequently recover excess paid from insured. **"Oriental Insurance Co. Ltd. v. Raj Kumari" AIR 2008 SUPREME COURT 403**

If the court gives a finding in favour of the insurer then it can recover it by filing an execution case or a certificate proceeding **National Insurance Company Vs. Baljit Kaur AIR 2004 SCW 212.**

Liability of Insurance Company to pay - Insurer liable to pay amount of compensation to claimant and recover it from insured, owner of vehicle - Mode and manner of recovery stated - Insurer can directly approach Executing Court for recovery. **Oriental Insurance Co. Ltd., Appellant v. Nanjappan and others, AIR 2004 SUPREME COURT 1630 = 2004 AIR SCW 952 see also National Insurance Company Vs. Kusum Rai 2006 (1) PLJR 306 ( SC) : (2006) 4 SCC 404, United India Insurance Vs. Leham Devi 2018 (2) PLJR 482 see also SHAMANNA AND ANOTHER Versus THE DIVISIONAL MANAGER THE ORIENTAL INSURANCE CO. LTD. AND ORS. 2018 0 Supreme(SC) 798**

**National Insurance Co. Ltd. Versus Parvathneni & Anr. (2009) 8 SCC 785** if the Insurance Company proves that it has no liability to pay compensation to the claimants, the Insurance Company cannot be compelled to make payment and later on recover it from the owner of the vehicle. **see also SHAMANNA AND ANOTHER Versus THE DIVISIONAL MANAGER THE ORIENTAL INSURANCE CO. LTD. AND ORS. 2018 0 Supreme(SC) 798**



Plying a vehicle without permit is a fundamental statutory infraction. Not having permit cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, violation of a condition of carrying more number of passengers. In cases of such fundamental statutory infraction Insurer cannot be held liable to pay compensation. However, it may be made to pay the compensation in the first instance and recover the same from the owner and the driver. **Amrit Paul Singh & Anr. VERSUS TATA AIG General Insurance Co. Ltd. & Ors. AIR 2018 SC 2662 : 2018 0 Supreme(SC) 490;**

The Tribunal has absolved the insurance company on the finding that no premium was received by the insurance company nor any insurance policy was ever issued by the insurance company in relation to the offending vehicle. The respondents no.2 and 3 had relied on a Cover Note which according to respondent No.1 - Insurance Company was fraudulently obtained from the then Development Officer, who was later on sacked by respondent No.1 Insurance Company. The possibility of misuse of some cover notes lying with him could not be ruled out. But for the Cover Note issued by the Development Officer of respondent No.1 Insurance Company at a point of time when he was still working with respondent No.1, to do substantial justice, we may invoke the principle of "pay and recover", as has been enunciated by this Court in the case of National Insurance Co. Ltd. v. Swaran Singh & Ors., [\(2004\) 3 SCC 297](#)(para 110) **Mangla Ram Versus Oriental Insurance Co. Ltd. & Ors. AIR 2018 (SC) 1900**

### **POWER OF APPELLATE COURT**

Two vehicles, one belonging to B.S.R.T.C. and another belonging to Police Department involved in accident - Tribunal directing B.S.R.T.C. and Police Department to pay compensation in equal shares - No appeal preferred against it by Police Department - High Court in appeal filed by B.S.R.T.C. cannot make a new case and direct B.S.R.T.C. to pay entire compensation without giving any reasons, though no appeal was preferred by Police Department and in essence accepted order of Tribunal. **AIR 2007 SUPREME COURT 649 "Administrator, B.S.R.T.C. v. Ranjana Majhi"**

### **PAYMENT OF INTEREST**

The rate of interest should not be more than 7.5% as granted by the Supreme Court in **New India Assurance Company Vs. Charlie & others 2005 (2) PLJR 249**

Granting of interest will depend on the facts and circumstances of each case and would normally depend upon the bank rate prevailing at the relevant time **Abati Bezbaruah Vs. Director General Geological Survey of India and another (2003) 3 SCC 148 SEE ALSO Dharampal Vs. U.P.S.R.T.C. (2008) 12 SCC 208**

Discretion in awarding of interest is to be exercised where it can be claimed as a matter of right. In circumstances retrospective enhancement of interest for default in payment of compensation together with interest payable thereupon is not permissible as it will amount to imposing of penalty **National Insurance Company Vs. Keshav Bahadur and others 2004 AIR SCW 737**

If the Compensation has been enhanced by the competent court the interest is payable on the enhanced compensation from the date of application for compensation and not from the date of the judgement. **Smt. Chameli Wati vs. Delhi Municipal Corporation AIR 1986 SC 1191 : (1986) 4 SCC 503.**

.Interest is payable from the date of filing of the claim application and not from the day of decision **Kaushnuma Begum Vs. New India Assurance Company (2001) 2 SCC 9 SEE ALSO The Manager Oriental Insurance Company Ltd. vs. Mostt. Chameli Devi 1997 (1) PLJR 1010. Nand Kishore Prasad Singh Vs. Rajeev Kumar Gupta 2006 (1) PLJR 612**

## **PAYMENT OF PREMIUM**

Liability of insurer - Cheque issued by insured towards payment of premium was dishonoured - As a result policy of insurance was cancelled - Insured was intimated about cancellation much before accident occurred - Insurer not liable to pay compensation - However, since claimant hailed from lowest strata of society, Court in exercise of powers under Art. 142, directed insurer to pay compensation and recover it from owner. **AIR 2008 SUPREME COURT 767 "Deddappa v. Branch Manager, National Insurance Co. Ltd.": (2008) 2 SCC 585**

The policy money paid by cheque, the cheque dishonoured, but policy was not avoided for the said reason. Liability of third party risk as the public interest served by the Insurance Policy must prevail over the insurer's interest. **Oriental Insurance Company Ltd. Vs. Inderjit Kaur (1998) 1 SCC 365.**

If the premium has not been paid and the cheque in lieu of such payment has bounced the insurance contract is void and the insurance company cannot be directed to pay the claim **National Insurance Company Vs. Seema Malhotra (2001) 3 SCC 151** see also **Oriental Insurance Company Vs. Jhaman Mian 2004 (2) PLJR 813**

Policy with regard to third party risk issued on the basis of payment made by cheque. Cheque dishonoured and the policy was cancelled subsequently. The Insurance Company cannot deny its liability in respect to third party as the right already accrued in favour of the third party. The right of the third party, who is not the signatory to the Contract of Insurance is protected as the manifest object of Chapter 11 of the Motor Vehicle Act is to insure that third party, who suffers injury due to use of Motor Vehicle may be able to get damages from the owner of the vehicle or the driver who have cause the injury. The rights of the third party to get indemnify can be exercised only against the insurer of the vehicle. Thus the Insurance Company cannot avoid liability in respect of third party. **New India Assurance Company Vs. Rula & Others AIR 2000 S.C. 1082** see also **The New India Assurance Company Vs. Sona Devi 2007 (1) PLJR 212**

Mere handing over of the cheque to the bankers to be sent to the Insurance Company would not result into automatic renewal of the policy. **Pradeep Kumar Jain vs. CITI Bank (1999) 6 SCC 361** see also **[2015] 0 Supreme(SC) 329 Central Bank of India Vs. Jagbir Singh**

The plea that the cheque by which the premium has been paid has bounced should be supported by a certificate of the bank **Sri Ishar Alloys Steel ltd. Vs. Jayaswals NECO Ltd. 2001 AIR SCW 837** see also **Oriental Insurance Company Vs. Jhaman Mian 2004 (2) PLJR 813**

## **PERMANENT DISABILITY**

Permanently disabled to an extent of 70% in accident - Claimant working as a Tool and Die Engineer in Overseas company . failed to prove his income with documentary evidence - But fact that he was holding an engineering certificate and was working in Overseas company is not in dispute - Taking into consideration undisputed fact of his qualification, fixation of his monthly income at Rs. 8,000/-would be just and reasonable. **AIR 2014 SC (Supp) 1322 "M. K. Gopinathan Vs. J. Krishna"**

While determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Compensation under the head 'permanent disability' cannot be denied on the ground that substantial amount had been fixed under the head 'loss of earning' and 'loss of earning capacity'. **AIR 2013 SUPREME COURT 2629 "S. Manickam v. Metropolitan Transport Corp. Ltd."**

The various elements of compensation are enumerated as under in cases of disability

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)" **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 see also AIR 2012 SUPREME COURT 361 "Ram Kiran Goyal v. Sub-Divisional Engineer" ; AIR 2012 SUPREME COURT 459 "Sanjay Batham v. Munnalal Parihar" AIR 2012 SUPREME COURT 534 "Ibrahim v. Raju" : Laxman Alias Laxman Mourya Vs. Divisional Manager Oriental Insurance Company (2011) 10 SCC 756 : (2012) 1 SCC (Cri) 108; AIR 2012 SUPREME COURT 3431 "N. Suresh v. Yusuf Shariff"**

Where Doctor assessed disability suffered by claimant at 75% and nothing adverse to interest of claimant was elicited though Doctor was cross-examined at length by Insurance Company, it was held that taking 50% disability into account while calculating loss of income was not proper and loss of earning capacity of claimant was calculated to be Rs. 6,12,000/- by taking disability suffered by claimant at 75%. **AIR 2012 SUPREME COURT 544 "D. Sampath v. United India Insurance Co. Ltd."**

In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller. **AIR 2012 SUPREME COURT 782 "Mohan Soni v. Ram Avtar Tomar" (2012)2SCC267,**

Weakening of his right hand would adversely affect his ability to perform his occupation as silk winder - Supreme Court thus assessed disability of claimant to earn in future at 30% as against 25% assessed by High Court - Compensation thus enhanced from Rs. 2,78,500/- to Rs. 3,20,000/-.2011 **AIR SCW 2662 "C. Mohanraju v. Divisional Manager, United India Assurance Co. Ltd."**

Claimant child had suffered 10% disability - Loss of future earning - Could not be decided on any legal principle - Compensation granted on basis of notional income - Plea that notional income should be calculated on basis that claimant would have earned Rs. 4,000/-per month - Not tenable - Compensation of Rs. 1,20,000/- granted by High Court held was adequate even as per structural formula. **AIR 2010 SUPREME COURT 40 "Priya Vasant Kalgutkar v. Murad Shaikh"**

Amputation of both legs amount to permanent disability, deduction of 1/3 of the amount from his total income towards personal expenses need not be insisted upon **Oriental Insurance Company Ltd. Vs. Ram Prasad Varma and others 2009 AIR SCW 1430** see also **New India Assurance Company Vs. Rajendra Kumar Soncheti 2019 (2) BLJ 32** , **Sandeep Khanuja Vs. Atul Dande (2017) 3 SCC 351**

Accident compensation - Determination - State of affairs as on date of accident - Is relevant - Subsequent events can be considered - Fresh claim on basis of subsequent events however, not tenable. (Para 5)  
(Determination - Shortening of leg of claimant due to fracture - Not total disablement - Claimant working as driver prematurely retired from service due to injury - Compensation of Rs. 3,75,000/- determined by taking **disability at 40%** and considering pension and other benefits received by him - Held, was proper. **AIR 2009 SUPREME COURT 337 "Ramprasad Balmiki v. Anil Kumar Jain"**

Injured 17 years old student at time of accident suffered injuries with 80% disability - Injured requiring continuous nursing as he is unable to perform his day to day activities - Life of injured is very miserable and there would be substantial financial burden on claimants for entire life of their injured son - Amount of compensation of Rs. 18,75,800/- awarded by Tribunal is just and proper **AIR 2014 SC (Supp) 232 "R. Venkata Ramana Vs. The United India Insurance Co. Ltd."**

**Disability of 50%** discovered after filing of claim. Amendment of the claim petition should be allowed **Anand Kumar Jain vs. Union Of India AIR 1986 SC 1125 : (1986) 2 SCC 275. SEE ALSO Asraf Alli vs. Naveen Hotel 2009 AIR SCW 1325**

Compensation for motor accident resulting to total disability see **R.D.Hattangadi vs. Pest Control (India) Pvt. (1995) 1 SCC 551; Ashwini Kumar Mishra Vs. P.Muniam Babu, AIR 1999 S.C. 2260 : (1999) 4 SCC 22.**

**MOTOR VEHICLES - Compensation - Effects on sexual life - suffering injuries in accident disability is total A. Robert Vs. The United insurance Co. Ltd. (1999)- 8-SCC-226 \ 1999-AIR(SCW)-0-2897**

Effect of permanent disability on earning capacity of the injured - Loss of future earning – Calls for grant of compensation with the adoption of multiplier method is to be taken into consideration **SANDEEP KHANUJ VERSUS ATUL DANDE & ANR. 2017 0 Supreme(SC) 109;**

### **PERMANENT DISABILITY FOR A CHILD**

Expenses relating to treatment,

hospitalization, medicines, transportation etc.

Loss of earnings Attendant charges ain, Suffering and Loss of Amenities

Loss of marriage prospects

Future medical treatment

Is to be considered.

How the compensation should be invested discussed **KAJAL VERSUS JAGDISH CHAND & ORS. AIR 2020 SC 776**  
**PERMIT**

Plying a vehicle without permit is a fundamental statutory infraction. Not having permit cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, violation of a condition of carrying more number of passengers. In cases of such fundamental statutory infraction Insurer cannot be

held liable to pay compensation. However, it may be made to pay the compensation in the first instance and recover the same from the owner and the driver. **Amrit Paul Singh & Anr .VERSUS TATA AIG General Insurance Co. Ltd. & Ors. 2018 0 Supreme(SC) 490;**

The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the comprehensive insurance policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. **2010 AIR SCW 6604 "Kamala Mangalal Vayani v. M/s. United India Insurance Co. Ltd."**

The Insurer is not liable to pay the loss if the insured vehicle had no permit and in terms of section 149 (2) defense is available to the insured. **National Insurance Company Vs. Challa Bharathamma JT 2004 (7) SC 519 : (2004) 8 SCC 517 "National Insurance Co. Ltd. v. Challa Upendra Rao"= 2004 AIR SCW 5301 ; AIR 2004 SUPREME COURT 4882**

expression "public place" which includes any public conveyance. The word "public conveyance" as used in the Act has to be understood as a conveyance which can be used by public in general. The **Motor Vehicles Act, 1939** and thereafter the **Motor Vehicles Act, 1988** were enacted to regulate the law relating to **motor vehicles**. The vehicles which can be used for public are public **Motor Vehicles** for which **necessary permits** have to be obtained. Without obtaining a permit in accordance with the **Motor Vehicles Act, 1988**, no vehicle can be used for transporting passengers. (PARA 16) **State of Rajasthan – Appellant Versus Jag Raj Singh @ Hansa –2016 0 Supreme(SC) 487**

### **POLICE REPORT**

Under Insurance Act section 64 UM (10) Police reports regarding accidents or happening cannot be ignored **United India Insurance Company vs. Shila Devi 1997(1) PLJR 270.**

The Claims Tribunal is empowered to treat the Police Report of the accident on its receipt as if it is an application made by the claimant for award of the compensation to him under the Act by virtue of Section 166(4) of the Act and thus has jurisdiction to decide such application on merits in accordance with law. **Vimla Devi & Ors. Versus National Insurance Company Limited & Ors. 2018 0 Supreme(SC) 1140;**

### **POLICY**

Act Policy - Insurer is not liable for anybody, including the owner, other than third party.

Policy of insurance must comply with the conditions of section 147(1)(a) and (b) **NATIONAL INSURANCE COMPANY LTD. Vs. BALAKRISHNAN AIR 2013 (SC) 473 : [2012] 8 Supreme 32/**

An Act Policy covers only third party and neither a pillion rider nor a co-passenger - Comprehensive/Package policy, on the other hand would cover Pillion rider, co-passenger as well as the owner - Liability of the insurer would depend upon nature of the policy **ORIENTAL INSURANCE COMPANY LTD. Vs. SURENDRA NATH LOOMBA AIR 2013 (SC) 483 : [2012] 8 Supreme 71**

Where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the

accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof. **AIR 2012 SUPREME COURT 2817 "United India Insurance Co. Ltd. v. Laxmamma"**

A policy is issued after the acceptance of the proposal, first premium for insurance and it has to be honoured by the Company as the contract for insurance is accepted. **R.Ratilal & Co. vs. National Security Assurance Co. Ltd. AIR 1964 SC 1396.**

Once the insured has issued a certificate of insurance the insurer has to satisfy any decree -of a claim arising out of the insured vehicle. **Guru Govekar vs. Filomena F. Lobo (1988) 3 SCC 1**

When a policy is taken on a particular date, its effectiveness is from the commencement of that date. The Insurance Policy obtained on the date of the accident became operative from the commencement of the date of insurance i.e. from the previous mid night and since the accident took place on the date of the policy the insurer became liable. **New India Assurance Co. Ltd. Vs. Ram Dayal & others (1990) 2 SCC 680.**

Liability of the Insurance Company will start when the policy becomes operative i.e. on the date and time the premium is paid. **National Insurance Co. Ltd. vs. Jikubhai Nathuji Dabhi (1997) 1 SCC 66** see also **Oriental Insurance Company Ltd. Vs. Sunita Rathi (1998) 1 SCC 365.** This judgement stands confirmed by 3 judges bench of the Supreme Court in **New India Assurance Company vs. Bhagwati Devi (1998) 6 SCC 534.;** **New India Assurance Co. Ltd. Vs. Sita Bai and others (1999) 7 SCC 575 : AIR 1999 SUPREME COURT 3577**

Before the Policy comes into effect, notice issued by the Insurance Company canceling the same in the terms of the contract as the Branch Manager was not competent to take the liability on behalf of the Company. Contract validly terminated. Policy thus not effective. **State Of Orrisa vs. United India Insurance Company (1997) 5 SCC 512 : AIR 1997 SC 2671.**

### **PROOF OF INCOME**

Onus of proving of income lies on the claimants. **Syed Basheer Ahmed Vs. Md. Jameel (2009) 2 SCC 225** see also **New India Assurance Company Vs. Yogesh Devi (2012) 3 SCC 613 : (2012) 2 SCC (cri) 215. AIR 2012 SUPREME COURT 945 .**

### **REVIEW**

No error apparent on the face of the record in the said judgment. Virtually the petitioner seems to have assailed the aforesaid judgment of this Court in the guise of the review petition which is not permissible in the eye of law **Smt. Parwati Devi Versus Branch Manager, United Insurance Company Limited 2019 (2) PLJR 803 : 2019 (3) BLJ 903**

The Tribunal has power to review its own order if it is convinced that it has been obtained by practicing fraud or misrepresentation **United India Insurance Company Vs. Rajendra Singh (2000) 3 SCC 581 AIR 2000 SC 1165 SEE ALSO Munna Kumar Singh Vs. The National Insurance Company 2006 (4) PLJR 262 The Chairman New India Assurance Company Vs. Most. Prabhawati Devi 2007 (1) PLJR 337.**

When a review is sought due to procedural defect, the inadvertent errors must be corrected by the Tribunal to prevent abuse of its process. If no error or illegality in the process has been committed the Tribunal has no jurisdiction to modify the judgement and the award. **The New India Assurance Company Ltd. vs Jamuna Devi 1996 (2) PLJR 566. see also Division Manager New India Assurance Company Ltd. vs. Smt. Kanti**

## **Devi 1999 (1) PLJR 248**

Motor Vehicles Act does not lay down any power of review since the tribunal works as court the provisions of C.P.C. applies the correction of mistake can be done by exercise of inherent jurisdiction under section 151 of the C.P.C. **Binod Kr. Choudhary vs. Kamal Narain Thakur 1997 (2) PLJR 30**

### **RECOVERY OF THE AMOUNT PAID**

The Insurance Company can directly approach the execution court for recovery of the amount paid in compensation if it is held by the Tribunal that the liability was with the insured and not with the insurer **National Insurance Company Vs. Baljit Kaur 2004 AIR SCW 212 ; Oriental Insurance Company Vs. Najappan and others 2004 AIR SCW 952 : AIR 2004 SUPREME COURT 1630**

### **REGISTRATION OF THE VEHICLE**

**Sections 39 and 43** Using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the **Motor Vehicles** Act but also a fundamental breach of the terms and conditions of policy contract **Narinder Singh Vs. New India Assurance Company Ltd.. AIR 2014 (SC) 3761**

### **REQUISITION OF VEHICLE BY GOVERNMENT**

Requisition of property amounts to temporary deprivation of property from possession user of vehicle is changed from the real owner. The government on the basis of the requisition becomes owner of the vehicle and the Insurance Company cannot be held liable for payment of damages and loss caused during requisition. **Ram Narayan Singh Vs. The Election Commission and others 1996 (1) PLJR 621.**

Motor Vehicles Act (59 of 1988), S.168, S.2(30) - Representation of the People Act (43 of 1951), S.160 - MOTOR VEHICLES - ELECTION - POSSESSION - Compensation - Liability of registered owner - Car in question at time of accident was requisitioned by Magistrate for assembly elections - Being requisitioned by statutory authority, owner had no other alternative but to handover possession - Once possession is handed over, owner cannot exercise any control thereupon - State shall be, therefore, liable to pay compensation and not registered owner of car. **AIR 2008 SUPREME COURT 735 "National Insurance Co. v. Deepa Devi"**

### **SETTLEMENT OF CLAIM**

(i) The two-Judge Bench in Santosh Devi (AIR 2012 SC 2185) should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma (AIR 2009 SC 3104), a judgment by a co-ordinate Bench. It is because a co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another co-ordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari (AIR 2013 SC (Supp) 474), which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. **National Insurance Company Limited v. Pranay Sethi and Ors. AIR 2017 SUPREME COURT 5157**

Taking income from the agricultural labour work at Rs. 3,000/- per month and Rs. 1,500/- per month for the household work, the monthly income of the deceased is fixed at Rs. 4,500/- per month deducting 1/3rd for personal expenses, contribution of deceased towards the family is calculated at Rs. 3,000/- per month and Rs. 36,000/- per annum. Deceased Chanchali Nayak was aged 42 years. As per the second Schedule to the Motor Vehicles Act, 1988, for the age groups 40-45 years multiplier is "15". As per Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009 : (2009) 6 SCC 121, for the age groups 41-45 years multiplier to be adopted is "14". Therefore, the multiplier of "12" adopted by the tribunal and the High Court may not be correct. Hence, the multiplier of "12" adopted may not be correct. Adopting the multiplier of "14" loss of dependency is calculated at Rs. 5,04,000/- (3,000x12x14).

As per the decision of the Constitution Bench in National Insurance Co. Limited v. Pranay Sethi and Ors. **AIR 2017 SUPREME COURT 5157** MANU/SC/1366/2017 : 2017 (13) SCALE 12, compensation of Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral expenses is awarded. Thus total compensation awarded to the claimants is enhanced to Rs. 5,34,000/- payable with interest at the rate of 7% per annum **Laxmidhar Nayak and Ors. Vs. Jugal Kishore Behera and Ors. AIR 2018 SUPREME COURT 204** MANU/SC/1506/2017 : 2017(13)SCALE718 ; 2018(1) BLJ 133 (SC)

Claim is made under section 166 of the Motor Vehicles Act, the principles for determining compensation as per Section 163-A can be used as a guide. Thus, the Second Schedule can be used as a reference for determining compensation in a claim under Section 166 of the Act. **2011 AIR SCW 2685 "Sant Singh v. Sukhdev Singh"**

For the settlement of the policy the Insurance Company must produce the policy for doing justice **National Insurance Company vs. Jugal Kishore (1988) 1 SCC 626.**

Breach of policy the terms of the policy conditions by carrying humans in a goods vehicle more than the permitted number cannot be said to be such fundamental breach so as to afford ground to the insurer to indemnification unless there were some factors contributing to the cause of such accident. **B.V.Nagaraju vs. Oriental Insurance Company (1996) 4 SCC 647.**

10 % depreciation for the first year on the basis of the sum insured is permissible **Pradeep Kumar Jain vs. CITI Bank (1999) 6 SCC 361**



## **STEPS IN THE SHOES OF THE OWNER**

**Deceased driving motor vehicle after borrowing it from real owner - Thus he stepped into shoes of owner of vehicle - His L.Rs. could not claim compensation u/S.163-A. AIR 2009 SUPREME COURT 3056 "Ningamma v. United India Insurance Co. Ltd." See also National Insurance Vs. Sanjay Sahay 2017 (4) BLJ 177 : 2018 (2) PLJR 359**

Borrower of the vehicle is not a third party as he steps in the shoes of the owners **Ninagamma Vs. United India Insurance Company 2009 AIRSCW 4916 : AIR 2009 SC 3056 : (2009) 13 SCC 710 see also HDFC Bank Ltd. Vs. Kumari Reshma 2015 0 AIR(SC) 290; 2015 2 JLJR(SC) 9; 2015 2 PLJR(SC) 283 SEE ALSO United India Insurance Company Ltd Versus Sumitra Devi M. A. No.674 of 2013 disposed of on 29-01-2019 ; United India Insurance Company Ltd Versus Sanjeev Kumar Singh M. A. No.122 of 2015 disposed of on 26-03-2019**

## **TERRITORIAL JURISDICTION**

Objection of jurisdiction can be raised at any stage and the Tribunal where the claimant resides has jurisdiction to deal with Claim Cases **Mantoo Sarkar Vs. Oriental Insurance Company 2009 AIR SCW 136 see also Divisional Manager The Oriental Insurance Company Vs. State Of Bihar 2010 (4) PLJR 1036**

The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hyper technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court in Mantoo Sarkar (AIR 2009 SC 1022) (supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC. **Malati Sardar v. National Insurance Company Ltd. and Ors AIR 2016 SUPREME COURT 247**

The truck belong to a welfare organisation which was exempted to be insured, the Tribunal awarded compensation was rejected by the Single Judge of the High Court, holding that the Tribunal had no jurisdiction, not proper the Tribunal **whether had jurisdiction to adjudicate upon the claim-petition**. The provisions relating apportionment of the liability does not suggest an insurer in every case, because then on the same logic it will be necessary to have a driver of the vehicle apart from the owner. It cannot be suggested that an owner driven car is also exempted from the jurisdiction of the Claims Tribunals. **PARMANAND THAKUR Vs. COMMISSIONER, COAL MINES WELFARE ORGANISATION (1987) ACJ 551 : AIR 1988 Patna 156 : (1987) 35 BLJR 818 : (1987) PLJR 350 (D.B.)**

## **THIRD PARTY**

Son of the owner of the vehicle is not a third Party **New India Assurance Company Vs. Sadanand Mukhi (2009) 2 SCC 417 : 2009 AIR SCW 1372**

Deceased being employee falls in category of third party It is obvious from the circumstances that the deceased was indeed a third party being neither the insurer nor the insured. **New India Assurance Co. Ltd v. Shanti Bopanna and Ors. AIR 2017 SUPREME COURT 2857**

### **THIRD PARTY LIABILITY OF INSURER**

Insurer's liability - Act policy - Insurer-owner of motor vehicle himself getting injured due to his own negligent driving - Insurer is not liable to pay compensation – More so when additional premium was not paid in respect of entire risk of death or bodily injury of owner "**Oriental Insurance Co. Ltd. v. Jhuma Saha**" AIR 2007 SUPREME COURT 1054 ( 2007) 9 SCC 263

Limit of liability with regard to third party risk does not become unlimited higher than the statutory liability even after the issuance of comprehensive policy on the estimated value of the vehicle. The fact that the insurance policy is comprehensive is of no consequence. For an unlimited third party risk cover specific agreement and payment of separate premium is necessary. **New India Assurance Co. Ltd. vs. Shanti Bai (1995) 2 SCC 539 : AIR 1995 SC 1113** see also **National Insurance Company vs. Jugal Kishore (1988) 1 SCC 626 ( SECTION 147 OF MOTOR VEHICLES ACT)**

A person dying or getting injured while alighting from a public service vehicle carrying passengers for hire or reward or pursuant to a contract of employment cannot be treated as a third party rather he must be considered as a passenger and the liability must be covered under section 147 of the MOTOR VEHICLES ACT. **NOORJAHAN (TMT) VS. SULTAN RAJIA ALIAS THAJU AND OTHERS (1997) 1 SCC 6.**

Terms indemnifying any person driving the car with permission of the insured provided such person was not indemnified under any other policy- effect of the proviso -- Liability of insurer vis-à-vis third party not effected.. **New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanmal Aswani. AIR 1964 SC 1736 :(1964) 2 SCJ 428: (1964) 7 SCR 867 :1965 Mah IJ 257.**

In **Dhanraj Vs. New India Assurance Company and others (2004) 8 SCC 553: AIR 2004 SUPREME COURT 4767** it has been held that the owner of the vehicle does not come within the definition of third party and the insurance policy does not require an insurance company to assume risk of the owner the vehicle. See also **United India Insurance Company Vs. Davinder Singh (2007) 8 SCC 698 ; Oriental Insurance Company Vs. Rajni Devi and others (2008) 5 SCC 736**

Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise. **AIR 2007 SUPREME COURT 1054 "Oriental Insurance Co. Ltd. v. Jhuma Saha"= 2007 AIR SCW 859**

### **TRANSFER**

A Claims Tribunal having no territorial jurisdiction in a claim case can try a case if the same has been transferred to it by the High Court under its power under section 24 C.P.C. **Smt. Rekha Kumari vs. The Oriental Insurance Company (1995) 2 BLJR 1147.**

In a second hand purchase of vehicle, the insurance policy is deemed to be transferred to the extent of the liability of the third party since the deeming provision provides for transfer of third party risk only. **Complete Insulations (p) ltd. vs. New India Assurance Company Ltd. (1996) 1 SCC 221 : AIR 1996 S.C. 586** see also **Rikhi Ram Vs. Smt. Sukhrania 2003 AIR SCW 780.**

In a second hand purchase of vehicle, information of transfer not given to the Insurance Company in the prescribed format. Yet Certificate shall be deemed to have been transferred, when information was given by the insured. No reply will mean acceptance **New India Assurance Company Ltd. Vs.Smt. Sheela Ram**

**AIR 1999 S.C. 56. See also Rakhi Ram Vs. Sukhrania and others (2003) 3 SCC 97.**

In a second hand purchase of vehicle, the simple passing of the property in goods will be governed by the provisions of section 19 of the Sales Of Goods Act ,1930 **Vasantha Viswanathan vs. Elayalwar (2001) 8 SCC 133.**

### **TRANSFER OF OWNERSHIP**

In terms of Section 50 of the Act, the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transferor to report the fact of transfer within 14 days of the transfer. In case the vehicle is sold outside State, the period within which the transfer ought to be reported gets extended. On the other hand, the transferee is also obliged to report the transfer to the registering authority within whose jurisdiction the transferee has the residence or place of business where the vehicle is normally kept. Section 50 thus prescribes timelines within which the transferor and the transferee are required to report the factum of transfer. As per Sub-Section 3 of said Section 50, if there be failure to report the fact of transfer, fine could be imposed and an action under Section 177 could thereafter be taken if there is failure to pay the amount of fine. These timelines and obligations are only to facilitate the reporting of the transfer. **It is not as if that if an accident occurs within the period prescribed for reporting said transfer, the transferor is absolved of the liability. Prakash Chand Daga Versus Saveta Sharma & Ors. 2018 0 Supreme(SC) 1266; AIR 2019 SUPREME COURT 66**

Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person ... .. Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person, **P.P. Mohammed vs. K. Rajappan and Ors. (2008) 17 SCC 624 SEE ALSO PRAKASH CHAND DAGA VERSUS SAVETA SHARMA & ORS. 2018 0 Supreme (SC) 1266;**

### **TRACTOR**

Labourers traveling in tractor trollies - Insurance Company has no liability. **"United India Insurance Co. Ltd. v. Serjerao" AIR 2008 SUPREME COURT 460**

Tractor was insured only for carrying out agricultural work which would not include digging of earth and taking it in trolley to brick kiln - Respondent being mere passenger and not owner or driver, his claim petition could not have been allowed **AIR 2007 SUPREME COURT 1971 "Oriental Insurance Co. Ltd. v. Brij Mohan".**

Tractor-trailer falls under S. 2(14) as "goods carriage" and consequently it falls under definition of "transport vehicle" under S. 2(47) **AIR 2005 SUPREME COURT 3428 "Natwar Parikh and Co. Ltd., M/s. v. State of Karnataka"= 2005 AIR SCW 4361**

Tractor is a machine run by diesel or petrol. It is a self-propelled vehicle for hauling other vehicles. It is used for different purposes. It is also used for agricultural purposes, along with other implements. It is a self-propelled vehicle capable of pulling alone as defined under the definition of motor vehicles. It does not fall within any of the exclusions as defined under the Act. Thus, it is a motor vehicle in terms of the definition under Section 2(28) of the Act. So, even without referring to the definition of the Tractor in S. 2(44), if the definition of the motor vehicle as given under the Act is strictly construed, even then the Tractor is a motor vehicle as defined under the Act. **(Para 22) AIR 2013 SUPREME COURT 2150 "Chairman, R. S. R. T. Corporation v. Santosh"**

## **TRIAL OF CLAIM CASES ( SECTION 169)**

The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of Section 169 and the rules. Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. The whole object of summary procedure is to ensure that claim application is heard and decided by the Claims Tribunal expeditiously. The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application **Bimlesh and Ors v. New India Assurance Co. Ltd AIR 2010 SUPREME COURT 2591 SEE ALSO Smt. Rekha Devi Vs. Shyam Sunder Singh 2019 (2) PLJR 563**

By virtue of Section 169 (2), the Tribunal is clothed with the powers of a Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects but there is nothing in the Act from which it can be inferred that the Tribunal is bound by the technical rules of evidence. Therefore, the Tribunal cannot be faulted for having allowed the parties to lead secondary evidence. Rather, that was the only course available to the Tribunal for doing justice to the parties because the original file was lost in 1994 and the case had to be decided on the basis of reconstructed file. **NEW INDIA ASSURANCE CO. LTD. Vs. ANITA** (2011) 1 ACC 62 : (2011) 2 TAC 41

## **WAIVER**

A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct. **Krishna Bahadur vs. Purna Theatre and Ors. AIR 2004 SC 4282**

**Waiver** is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide *Dawsons Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha* [MANU/PR/0024/1935](#) : AIR 1935 PC 79, *Basheshar Nath v. CIT* [MANU/SC/0064/1958](#) : AIR 1959 SC 149, *Mademsetty Satyanarayana v. G. Yelloji Rao* [MANU/SC/0310/1964](#) : AIR 1965 SC 1405, *Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh* [MANU/SC/0333/1967](#) : AIR 1968 SC 933, *Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corpn.* [MANU/SC/0469/1991](#) : 1992 Supp (1) SCC 5, *Sikkim Subba Associates v. State of Sikkim* [MANU/SC/0313/2001](#) : (2001) 5 SCC 629 and *Krishna Bahadur v. Purna Theatre.*)

In order to constitute waiver there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.

There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights by Respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition. **Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants' Assn. 1988 Supp SCC 55 SEE ALSO Galada Power and Telecommunication Ltd. Vs. United India Insurance Co. Ltd. and Ors. [MANU/SC/0935/2016/](#) AIR 2016 SC 4021**

## WORDS AND PHRASES

### Income

The actual salary less tax amount ought to have been taken into consideration by the Tribunal for determining the compensation amount, in light of the dictum of the Constitution Bench of this Court in paragraph 59.3 of **Pranay Sethi NATIONALINSURANCE COMPANY LIMITED Vs.BIRENDER AND OTHERS** Decided on : 13-01-2020

It includes those benefits, either in terms of money or otherwise, that are taken into consideration for payment of income tax and professional tax. **Vijay Kumar Rastogi v. Uttar Pradesh State Roadways Transport Corporation. AIR 2018 SUPREME COURT 819 see also Sarita Rai Vs. Ramayan Singh 2018 (1) BLJ 166 : 2018 (2) PLJR 462.**

Depreciation is the deduction allowed for the decline in the real value of tangible or intangible assets over its useful life. Its value varies over time and cannot amount to tangible income for the purposes of computing annual income in a claim before the MACT. **Malarvizhi & Ors. Versus United India Insurance Company Limited & Anr. 2019 0 Supreme(SC) 1338;**

### Income Tax Deduction On interest

Section 194 A (3) (ix) provides for deduction of income tax to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees; **Inserted by the Finance Act, 2003, with effect from 1st June, 2003.**

In the said circumstances, it was not open to the District Judge to hold to the contrary. As a matter of fact, the District Judge was exercising his jurisdiction with regard to executing the award but while executing the same he had to be conscious of the fact that any such payment would be subject to statutory provisions. There being clear provision under the income tax act with regard to deduction of tax, it was not open to the District Judge to have held to the contrary. **National Insurance Co. Ltd.Versus Union Of India Through Finance Secretary Deptt. Of Finance 2016 4 PLJR 1006; 2015 0 Supreme(Pat) 1367;**

**Third party risks** - Phrases 'any person' and 'any passenger' - Coverage of - If concerned employee is neither a driver, nor conductor, nor examiner of tickets, insured cannot claim that the employer comes under the description 'any person' or 'passenger'. **RAMASHRAY SINGH Vs. NEW INDIA ASSURANCE CO. LTD. AND OTHERS AIR 2003 SC 2877**

The **Tractor** is a machine run by diesel or petrol. It is a self-propelled vehicle for hauling other vehicles. It is used for different purposes. It is also used for agricultural purposes, along with other implements. It is a self-propelled vehicle capable of pulling alone as defined under the definition of motor vehicles. It does not fall within any of the exclusions as defined under the Act. Thus, it is a motor vehicle in terms of the definition under Section 2(28) of the Act. So, even without referring to the definition of the Tractor in S. 2(44), if the definition of the motor vehicle as given under the Act is strictly construed, even then the Tractor is a motor vehicle as defined under the Act. **AIR 2013 SUPREME COURT 2150 "Chairman, R. S. R. T. Corporation v. Santosh"**

**Jugaad** is covered in the definition of the motor vehicles under Section 2(28) of the Act, **AIR 2013**

## **SUPREME COURT 2150 "Chairman, R. S. R. T. Corporation v. Santosh"**

**Accident** - Includes any untoward, unexpected event. **2013 AIR SCW 283 "Param Pal Singh v. M/s. National Insurance Co."**

Effective in the expression of effective Driving licence as under section 3 of the Motor Vehicle Act, 1988 means a valid licence both as regard the period and type of vehicle. **Ashok Gangadhar Maratha Vs. Oriental Insurance Company (1999) 6 SCC 620: 2000 ACJ 319**

A photocopy of a driving licence doesnot prove that the driver had a valid driving licence **United India Insurance Co.Ltd. Vs. Anbari and others 2000 ACJ 469**

A light Motor vehicle even though designed as a transport vehicle , but not used as a transport vehicle, the vehicle will be treated as A light Motor vehicle **Ashok Gangadhar Maratha Vs. Oriental Insurance Company (1999) 6 SCC 620.**

The term accident means some unexpected and unforeseen event or overlooked mischief **United India Insurance Company vs. Somari Devi 1999 ACJ 864.**

Apprentice is not an Employee insurance contract **New India Assurance Co. Ltd. Vs. Abhilash Jewellery (2009) 2 SCC 661**

### **COMPOSITE NEGLIGENCE - CONCEPT EXPLAINED.**

'Composite negligence' refers to negligence on part of two or more persons. Where a person is injured as a result of negligence on part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. **AIR 2008 SC (Supp) 1644 "Shiv Singh Chak v. Baby Jain"**

The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual. **AIR 2013 SUPREME COURT 2293 "Jiju Kuruvila v. Kunjamma Mohan"**

It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles involved in accident in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award **Khenyei v. New India Assurance Co. Limited and Ors. AIR 2015 SUPREME COURT 2261**

### **JUST COMPENSATION**

The term compensation has not been defined in the Act of 1988. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the **Motor Vehicles** Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the Act of 1988 makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. **The word “just” means -fair, adequate, and reasonable. It has been derived from the Latin word “justus”, connoting right and fair. In para 7 of State of Harayana & Anr. vs. Jasbir Kaur & Ors., (2003) 7 SCC 484 it has been held that expression “just” denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 this Court has observed that the compensation “is not intended to be a bonanza, largesse or source of profit”. That however may depend upon facts and circumstances of each case, as to what amount would be a just compensation. Reliance General Insurance Co. Ltd. Vs. Shashi Sharma & Ors. – AIR 2016 SUPREME COURT 4465: 2016 0 Supreme(SC) 745 , MANU/SC/1095/2016 see also SEBASTIANI LAKRA & ORSVERSUS NATIONAL INSURANCE COMPANY LTD. & ANR. AIR 2018 (SC) 5034; NATIONAL INSURANCE COMPANY LTD. VS. MANNAT JOHAL AND ORS. ETC. 2019 0 Supreme (SC) 484; AIR 2019 SUPREME COURT 2079**

#### **WRITTEN STATEMENT**

Owner of vehicle admitted in written statement that vehicle owned by him was involved in accident - Said admission in pleadings would be sufficient to hold that concerned vehicle was involved in accident **AIR 2011 SUPREME COURT 671 "Saroj v. Het Lal"**