

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-10-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2217 OF 2015

United India Insurance Company Limited,
No.134, Greams Road,
Chennai-6. ... Appellant/3rd Respondent

-vs-

1.Krishnaveni
2.V.Kanniyappan
3.D.Muthusamy ... Respondents 1 to 3/Petitioner
Respondents 1 & 2

Appeal against the order, dated 20.11.2014, made in
M.C.O.P.No.4734 of 2008, on the file of Motor Accident Claims
Tribunal (V Judge, Court of Small Causes), Chennai.

For appellant : Mr.Srinivasan Ramalingam

For respondent 1 : Mr.K.Goviganesan

J U D G M E N T

(Judgment of the Court was delivered by S.Manikumar,J.)

Being aggrieved by the finding, fixing negligence on
the driver of the bus, bearing registration No.TN-21-P-9909, and
the quantum of compensation of Rs.10,83,000/-, awarded with
interest, at the rate of 7.5% per annum, in M.C.O.P.No.4734 of
2008, dated 20.11.2014, to the legal representative of the
deceased, from the date of claim till deposit, United India
Insurance Company Limited, Chennai, has filed this appeal.

2. Short facts, leading to the filing of the appeal,
are as follows :

2.1. On 28.06.2006, about 20.15 p.m., when
A.Thandavamoorthy, son of the first respondent, was travelling
from Nellikuppam to Guduvancherry, in a bus, bearing

registration No.TN-21-P-9909, it dashed against an electric post, a live wire fell on the bus, in which, Thandavamoorthy was electrocuted. He died due to electrocution. In this regard, a case in Crime No.187 of 2006 for the offences under Sections 279, 334 and 304-A of IPC was registered against the driver of the bus, by the Sub Inspector of Police, Thiruporur Police Station. Mother of the deceased filed M.C.O.P.No.4734 of 2008 on the file of Motor Accident Claims Tribunal (V Judge, Court of Small Causes), Chennai, for compensation of Rs.10,00,000/-.

2.2. In her claim petition, the claimant has contended that prior to the accident, the deceased owned a chicken stall and earned Rs.10,000/- per month. United India Insurance Company Limited, appellant herein, has denied the manner of accident. They put the first respondent/mother to prove the same. Without prejudice to the above, they disputed the quantum of compensation under various heads, in particular, the claim of the first respondent, that prior to the accident the deceased earned Rs.10,000/- from the chicken stall. Before the Claims Tribunal, mother examined herself as P.W.1, and reiterated the averments made in the claim petition. P.W.2 is stated to have witnessed the accident. Ex.P-1-copy of FIR, Ex.P-2-copy of Charge Sheet, Ex.P-3-Sketch, Ex.P-4-School Certificate, Ex.P-5-Legal Heir Certificate, Ex.P-6-Insurance Certificate and Ex.P-7-Postmortem Certificate, have been marked on the side of the respondent/claimant. Though the appellant-insurer was granted permission to contest the case under Section 170 of the Motor Vehicles Act, 1988, no oral or documentary evidence was adduced.

2.3. Upon evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of the bus, bearing registration No.TN-21-P-9909, insured with the appellant company, was negligent in causing the accident. The Claims Tribunal has quantified the compensation as Rs.10,83,000/-, with interest, at the rate of 7.5% per annum, from the date of claim till deposit, as hereunder :

Loss of dependency	:	Rs.10,53,000/-
Funeral expenses	:	Rs. 25,000/-
Loss of estate	:	Rs. 5,000/-

Rs. 10,83,000/-

3. Assailing the correctness of the finding, fixing negligence on the driver of the bus, bearing registration No.TN-21-P-9909, Mr.Srinivasan Ramalingam, learned counsel for the appellant, submitted that the Tribunal erred in overlooking the defence of the appellant that it was only a case of electrocution, owing to the negligence of Tamil Nadu State Electricity Board, in not maintaining the electric post, which

came in contact with the bus. He further submitted that the Claims Tribunal has erred in relying on the evidence of P.W.2, not supported by any document. He also submitted that the Claims Tribunal ought to have dismissed the claim petition on the issue of negligence.

4. On the quantum of compensation, learned counsel for the appellant submitted that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs.6,500/-. It is also his contention that when the deceased had no permanent employment, addition of 50% of the income under the head 'future prospects', for computing the loss of contribution to the family ought not to have been made. For the above said reasons, he prayed for reversal of the impugned award.

5. Heard the learned counsel for the appellant and perused the material available on record.

6. Though P.W.1, mother of the deceased, has not witnessed the accident, P.W.2, eye-witness, has categorically deposed about the manner of accident, that when the driver of the bus, bearing registration No.TN-21-P-9909, insured with the appellant company, changed the route, on account of the crowd assembled for the festival, he dashed against the electric post, and, in the result, a live wire fell on the bus. Thandavamoorthy, who travelled in the bus, was electrocuted and subsequently died. Ex.P-1 is the copy of FIR in Crime No.187 of 2006, registered against the driver of the bus, for the offences under Sections 279, 334 and 304-A of IPC was registered against the driver of the bus, by the Sub Inspector of Police, Thiruporur Police Station. After investigation, Ex.P-2-Charge Sheet has been laid. Ex.P-3-Sketch has also been marked before the Claims Tribunal. On the contra, no oral or documentary evidence has been adduced on behalf of the appellant-insurance company.

7. Taking note of the judgment of the Hon'ble Apex Court in Rathnashalvan v. State of Karnataka, reported in AIR 2007 SC 1064, defining 'rashness' and also another judgment of the Hon'ble Apex Court in State of Karnataka v. Muralidhar, reported in AIR 2009 SC 1621, defining 'negligence', and on evaluation of evidence adduced by P.Ws.1 and 2, and the principles of law to be followed in arriving at the conclusion of negligence in motor transport accident cases, i.e., preponderance of probability, the Claims Tribunal has fixed negligence on the driver of the bus, bearing registration No.TN-21-P-9909, insured with the appellant company. In Rathnashalvan's case, cited supra, the Hon'ble Apex Court has defined 'rashness' as follows :

"Rashness consists in hazarding a dangerous or wanton act with the knowlede that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences."

8. In State of Karnataka v. Muralidhar, AIR 2009 SC 1621, referred to above, the Hon'ble Supreme Court has defined "negligence", as follows :

"Negligence means omission to do something with reasonable and prudent means granted by the consideration which ordinarily regulates human affairs or doing something which prudent and a reasonable means guided by similar considerations would not do."

9. In addition to the abovesaid judgments considered by the Claims Tribunal, this Court deems it fit to consider a few other cases, wherein a difference is made out between a tort and a crime, in so far as the motor accident claims cases are concerned.

10. In Jacob Mathew v. State of Punjab reported in 2005 (4) CTC 540, at Paragraphs 13 to 17, the Apex Court envisages the difference between the tort and crime, as follows:

"13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless."

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having

run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in *Andrews v. Director of Public Prosecutions*, [1937] A.C. 576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case-

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, *ibid*, Para 1.13)

15. The fore-quoted statement of law in *Andrews* has been noted with approval by this Court in *Syad Akbar v. State of Karnataka* (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

16. Law laid down by Straight, J. in the case *Reg v. Idu Beg* (1881) 3 All. 776, has been held good in cases and noticed in *Bhalchandra Waman Pathe v. State of Maharashtra* 1968 Mh.L.J. 423, a three-Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do,

or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

11. The Supreme Court in *Municipal Corporation of Greater Bombay v. Laxman Iyer* reported in 2003 (8) SCC 731, has explained the terms, "Negligence" "Composite Negligence" and "Contributory Negligence". At Paragraph 6, the Supreme Court explained, as to what act amounts to negligence and that the same is extracted hereunder:

"Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and the duty are strictly correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be said just and down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under

different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an action would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person."

12. The issue as to whether, in the absence of any pleading and proof of contributory negligence or rebuttal evidence, let in by the Insurance Company, contributory negligence can be fixed on the injured/deceased, as the case may be, came up for consideration before a Full Bench in Karnataka High Court in North East Karnataka Road Transport Corporation v. Vijayalaxmi reported in 2011 (6) CTC 353 (Kant) (FB) = 2011 (2) TNMAC 840 (Kant) (FB). After considering the rival submissions, the Full Bench of Karnataka High Court held as follows:

"11. Negligence is conduct, not a state of mind - conduct which involves an unreasonably great risk of causing damage. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing. It is a question of law whether in any particular circumstances a duty of care exists. The question is was the Defendant under any duty of care at all, and, if so, did he observe the standard required in the circumstances of the case? Foresight is the test for duty and remoteness. It is a characteristic of the definition of the tort of negligence that it does not refer to the scope of the protection it affords to the Plaintiff but rather to the qualities of blameworthiness or fault to be attributed to the conduct of the Defendant.

There is no liability for negligence unless there is in the particular case a legal duty to take care, and this duty must be one which is owed to the Plaintiff himself and not merely to others. This duty of carefulness is not universal; it does not extend to all occasions and all persons and all modes of activity. The harm to the Plaintiff's interest which has in fact occurred must be of a kind against which it was the duty of the Defendant to take precautions. In the absence of some existing duty the general principle is that there is no liability for a mere omission to act. The fundamental notion appears to be that the imposition of an obligation to take positive steps for the benefit of another requires that other should furnish something by way of consideration. The standard of conduct required by the common law is that of the reasonable man. The reasonable man is presumed to be free both from over-apprehension and from over-confidence. A reasonable man does not mean a paragon of circumspection. But he is also cool and collected and remembers to take precautions for his own safety even in emergency. So, while on the one hand an error of judgment may not amount to negligence, on the other hand the fact that it might happen to him is not necessarily a defence - even the most careful are sometimes careless.

12. The doctrine that, if the Plaintiff's act was the proximate cause of the damage the Plaintiff could not recover damage was a well-established Principle of Medieval law. In the sixteenth and seventeenth centuries the conception of negligence as a ground of liability worked its way into the common law. With the recognition of negligence as a ground of liability a practice grew up of alleging that a Plaintiff could not recover because he was debarred by his own negligence. The Rule of law is that if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls. When any person suffers damage as the result partly of his own fault and partly on the fault of any other person or persons, the claim in respect of that damage shall not be defeated by reason of the fault of the person suffered damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the Claimant's share in the responsibility for the damage.

13. The question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and the Defendant. All that the Defendant is obliged to prove is that the Plaintiff failed to take reasonable precautions for his own safety in respect of the particular danger which in fact occurred, so that he thereby contributed to his own injury. This however is not to say that in all cases the Plaintiff who is guilty of contributory negligence owes to the Defendant no duty to act carefully. The governing principle is that the Defendant must show that the Plaintiff has failed to take reasonable care for his own safety in respect to the particular danger which has in fact occurred. The question whether the principle applies in any particular case is, as always, one of fact. Firstly, the law does not, in general, require any man to be careful of his own safety. What it does say is that a man who has negligently created a danger whereby another person is injured may plead as a way of avoiding liability that the injured person by his negligence contributed to create the danger. Secondly, no question of operative contributory negligence arises in a case where the Defendant proves that the Plaintiff has failed to take precautions against a foreseeable danger which has not occurred and that those precautions, if taken, would have been effective to protect him against the unforeseeable danger which in fact occurred. The statement that the Plaintiff must be shown to have failed to take proper precautions for his own safety against the particular danger which in fact occurred does not mean that the particular form in which the danger manifested itself should actually have occurred to his mind. It is sufficient if it is a danger of a particular class whose occurrence he should anticipate and take reasonable precautions to guard against him. It is necessary to consider not only the causative potency of a particular act, but also its blameworthiness, though culpability here, as elsewhere in the law of torts, means not so much moral blameworthiness as a departure from the standard of care of the reasonable man.

13-A. The Court must also consider a third factor - namely, what is just and equitable. Hence the precise percentage by which the award is reduced is a question of fact in each case. The

Court should find and record the total damages which would have been awarded if the Claimant had not been at fault. It is inappropriate to apply this principle when the responsibility of one of the parties is properly to be assessed at 100 per cent. The Court cannot deal with minute percentage. It is a question of fact in each case whether the conduct of the Plaintiff amounts to contributory negligence. The burden of proving the negligence of the Plaintiff that contributed to the damage in such a way as to exonerate the Defendant wholly or partially lies upon the Defendant. The Defendant must always establish such contributory negligence as well amount to a defence. When the Court has to decide, that the case is one in which it is proper to apportion the loss between the parties, the result is that the Plaintiff's damages are reduced to such extent as the Court thinks just and equitable having regard to the Plaintiff's share in the responsibility for the damage.

14. The contributory negligence has two facets. One in which two or more vehicles and drivers are involved in the accident. In such a case the question is who drove the vehicle in a rash and negligent manner. If all of them drove the vehicle in a negligent manner, who contributed to what extent in causing the accident. It is on the basis of such factual finding apportioning the blameworthiness on the drivers, the contributory negligence has to be assessed. To the extent of the percentage of negligence attributed to each driver, the owner of the vehicle and consequently if the vehicle is insured, the Insurer would be liable to pay the compensation. If the driver himself is claiming compensation as third party, if his negligent act is also the cause of the accident, then the compensation payable to him would get reduced to the extent of the percentage of negligence attributed to him.

15. The second fact where the Claimant is not involved in the accident in any manner, i.e., in driving the vehicle but arises out of breach of duty, resulting in injury on account of the accident. Failure to take reasonable care or precaution for his own safety while traveling in a motor vehicle, in respect of the particular danger, which in fact occurred, so that he thereby contributed to his own injury. It is this second aspect which is dealt with under Section 123 of the Act.

16. Section 123 of the Acts casts a duty on the driver and conductor of a motor vehicle to prevent any person from traveling on the running board or on the top of the vehicle. There is an obligation cast on them under the statute to see that all persons are within the body of the vehicle. In spite of this statutory provision, if they permit any person to travel on the running board or on the top of the vehicle, it is breach of duty. It is an omission to do some thing which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do. The driver and conductor of a motor vehicle owe a duty to the passengers of a motor vehicle to see that they do not travel on the running board or on top of the vehicle. Similarly no person shall travel on the running board or on the top or on the bonnet of the motor vehicle. If he travels, it is a careless conduct, the commission of which amounts to negligence. A duty of care exists as it is embodied in a statute with foresight for the benefit of such persons traveling in a motor vehicle. Mere breach of law or duty would not create a liability to pay damages. Such a breach should result in injury which is the foundation of a claim for damages. Therefore, the question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and Defendant. Such a breach of duty should result in injury and consequent loses. In other words there should be a nexus between the breach of duty and the injury. If there is a blame causing the accident on both sides, the loses lies where it falls. This omission constitute a careless conduct. Foresight is the rest for duty and remoteness."

13. It is trite law that preponderance of probability is a test to be applied, in arriving at the conclusion on negligence.

14. In a decision in Union of India v. Saraswathi Debnath reported in 1995 ACJ 980, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case

the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

15. In *Bimla Devi & Ors. Vs. Himachal RTC* reported in 2009 (13) SCC 530, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

16. It is well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence.

17. Admittedly, the bus, bearing registration No.TN-21-P-9909, insured with the appellant company, was involved in the accident. Though the learned counsel for the appellant has contended that due to improper maintenance of electric post by Tamil Nadu State Electricity Board, the accident has occurred, and, that, therefore, the finding of negligence fixed on the driver of the bus should be reversed, this Court is not inclined to accept the same, for the simple reason that no such case was projected before the Claims Tribunal. Even taking it for granted that the electric post was not properly maintained, as alleged by the appellant, it cannot be denied that the driver of the bus alone dashed against the electric post, resulting in the live wire falling on the bus. Act of negligence, at any stretch of imagination, cannot be attributed to the alleged improper maintenance of the electric post, by Tamil Nadu State Electricity Board. Use of the vehicle coupled with the negligent driving of the same has caused the accident.

18. In this context, this Court also deems it fit to extract a few decisions, on the aspect of use of vehicle and the

cause of accident. As the limited dispute was with reference to the expression, "accident arising out of and use of motor vehicle", the Hon'ble Division Bench of this Court in United India Insurance Company Ltd., v. Amir Basha reported in 2004 (2) SCC 23 (DB), considered various decisions and ultimately, at Paragraph 13, held as follows:

"13. It is clear from the above decisions and in view of the object of the enactments, both under the Motor Vehicles Act, 1939 and 1988 the expression "caused by" and "arising out of" have a wider connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate. The expression "arising out of use of motor vehicle" as mentioned in Section 92-A of the 1939 Act and Section 165 of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases; accordingly we are of the view that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. We should not forget that these provisions are made in order to help the victims. We are of the view that restrictive interpretation should not be given for the word "use". We are also of the view that the expression "arising out of the use of motor vehicle" has to be given a wider meaning. We are also of the view that "use of motor vehicle" need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. Accordingly, we hold that the death of Absar arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son Absar."

At Paragraphs 8 to 12, the Hon'ble Division Bench considered the following decisions :

"8. We have already referred to the vaht

provisions regarding requirements of policies and limits of liability as well as matters to be tried by the Claims Tribunal. Now let us consider various decisions cited before us. The expression "caused by" and "arising out of" under Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Motor Vehicles Act, 1939 was considered by the Supreme Court in Shivaji Dayanu Patil v. Atschala Uttam More, AIR 1991 SC 1769. The following conclusion is relevant for deciding the present case: (paragraphs 35 and 36)

"35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/S.92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Sec.92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely

because there was interval of about four to four and half hours between the said collusion and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz- the petrol tanker No. MKL7461."

9. In *Sharlet Augustine v. K.K. Raveendran*, AIR 1992 Ker. 346, a Division Bench of the Kerala High Court had an occasion to consider the expression "arising out of the use of motor vehicle" under Section 110 of the Motor Vehicles Act, 1939. Their Lordships have held that the expression "arising out of the use of motor vehicle" referred to in Section 110 has to be given a wider meaning. In that case, the bus in question dashed against a wayside electric post. A passenger of a bus while he was carrying on rescue operations after coming out of the bus, got electric shock due to stray live wire and died. The Division Bench has held that death of passenger arose out of use of motor vehicle and his legal representatives would be entitled to compensation under Section 110.

10. In the case of *Babu v. Remesan*, AIR 1996 Ker. 95, a Division Bench of the Kerala High Court has held that: (para 5)

"5. Learned counsel for the Insurance Company tried to distinguish those decisions on the facts by pointing out that the use of the motor vehicles in those two decisions is direct, though the vehicles were stationary whereas in this case the use of the motor vehicle was only indirect though the rope was used for the purpose of keeping the load in the vehicle intact. The said distinction on the facts is not enough to exclude the accident which occurred in this case out of the ambit of the words "use of a motor vehicle." Such use need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. The expression employed by the Legislature is "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of a motor vehicle". Evidently the Legislature wanted to enlarge the scope of the word "use" and not to

restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation cases are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word "use" in the present context."

11. In the case of Himachal Road Trans. Corpn. v. Om Prakash, 1992 AC J 40 (Himachal Pradesh), a bomb planted by someone in a bus exploded when the bus had covered a short distance after starting from a bus-stand causing injuries to some and proving fatal to other passengers. A learned Single Judge of the Himachal Pradesh High Court has held that the death of or bodily injuries to persons arose out of the use of motor vehicle and the Claims Tribunal has jurisdiction to entertain claim petitions.

12. It is also relevant to refer a recent judgement of the Supreme Court in Kaushnuma Begum v. New India Assurance Co. Ltd., 2001 ACJ 428. In that case, a front tyre of a jeep burst while in motion. The vehicle became unbalanced and turned turtle, crushing to death a person walking on the road. The Tribunal after holding that there was neither rashness nor negligence in driving the vehicle, hence the driver has no liability and as such the owner has no vicarious liability to pay compensation to the dependants of the deceased and ultimately dismissed the claim petition, but awarded compensation under no fault liability. The order of the Tribunal was upheld by the High Court, against which the claimants preferred an appeal to the Supreme Court. Their Lordships following the rule of strict liability propounded in Rylands v. Fletcher, 1861 (73) All E.R.I, held that the accident occurred when the vehicle was in use and the rule of strict liability propounded in Rylands v. Fletcher is applicable in claiming compensation made in respect of motor accidents.

19. In United India Insurance Co. Ltd. v. V.Dharmarasu reported in 2007(5) MLJ 354, the death was due to contact with a live high tension wire on the container of the lorry. The death was recorded under Section 147 Cr.P.C., as a mysterious death. A claim for compensation was made. The Insurance Company disputed the claim, as it is not maintainable. This Court,

after considering a catena of decisions, held that,

"the claim petition is maintainable even if the driver of the vehicle was not proved to be negligent in driving the vehicle and negligence is one of the causes for action for making a claim for compensation in respect of accidents arising out of use of motor vehicle and the accident should be connected with the use of motor vehicle but the said contention need not be direct and immediate.

The expression "arising out of the vehicle" has to be given the widest interpretation having regard to the purpose underlying the motor vehicle legislation.

The claim petition is to be allowed, if the vehicle in question was in 'use' at the time of accident and it need not be a motor accident.

FIR and Section 161 statement can be used only to corroborate or to contradict the evidence before the Tribunal and all that is needed is preponderance of probabilities."

20. Apart from Amir Basha's case (cited supra), Kaushnuma Begum's case (cited supra) and Sharlei Augustine's (cited supra), the other decisions relied on, in V.Dharmarasu's case (cited supra), are extracted hereunder:

"15. The Division Bench of the Karnataka High Court in Gouri Bi (Smt) and others v. Khemraj reported in 1992 ACJ 623, has held that the expression "arising out of the vehicle cannot be equated to the phrases, "arising under" or "caused by" and arising out of. The Court further held that "arising out of has wide meaning and it means "connected with" and must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle that is required to satisfy the words "caused by". Casual relationship to the injury may be enough to satisfy the words the expression "arise out of" as used in the Act and in the policy.

17. In a decision in Maqbul Hussain Kitabullah v. Kulvinder Sriram Kapoor & Ors reported in 1995 ACJ 989 (Bom), the Court has held that,

"the expression "arises out of" had a wider connotation. It is not necessary that there should

be direct any proximate action between the use of motor vehicle and the accident resulting in death or permanent disablement. It is enough if the accident can be connected with the use of the motor vehicle. The construction of the expression "arises out of the use of a motor vehicle" in Section 92-A of the Act enlarged the field of protection made available to the victims of an accident and was in consonance with the beneficial object underlying the enactment. In other words the expression "arisen out of" cannot be equated to the expression "caused by"

18.Negligence is one of the causes for action for making a claim for compensation in respect of accidents arising out of use of motor vehicle. The accident should be connected with the use of motor vehicle but the said connection need not be direct and immediate. The expression "arising out of the vehicle" has to be given the widest interpretation having regard to the purpose underlying the motor vehicle legislation."

21. In National Insurance Co. Ltd. v. Gitaben Saitansinh Rajput reported in 2009(2) TNMAC 399 (Guj.), the driver was found murdered and his body was found in the driver seat. A claim for compensation was made. The company disputed the same, on the ground that the incident of death was a murder simplicitor and hence, no claim can be entertained. Though the above said issue is not relevant for the facts of this present case, yet the decision of the Gujarat High Court, as to whether the legal representatives of the deceased are entitled to make a claim for compensation, "arising out of use of motor vehicle", is worth consideration. At Paragraph 22, the High Court held that,

"The use of vehicle means it covers driven, repaired, parked, kept stationary or left unattended condition of vehicle in question or involved in accident. The accident is incidental to use of motor vehicle. Then jurisdiction of Claims Tribunal is not restricted under provision of the Motor Vehicles Act."

22. In New India Assurance Co. Ltd., v. Unnmalai reported in 2010 (1) TNMAC 576, the death was due to complication of burns. When the deceased was unloading grinders from the roof of the vehicle, without noticing the same, the driver started the vehicle, which came in contact with a live electric wire and that he was electrocuted. The company disputed the claim. This Court held that as the accident, arose

out of use of the vehicle, the Insurance Company is liable to pay compensation.

23. In National Insurance Co. Ltd., reported in 2012 (2) TNMAC 125 (Del.), when a tank driver climbed over the Tanker, after parking it, to check the condition inside the Tanker, he came in contact with a overhead electric wire and due to electrocution, died on the spot. Father, widow and minor son claimed compensation under Section 163-A of the Motor Vehicles Act. The National Insurance Company Ltd., the insurer of the tanker disputed the claim, on the ground that the death was not due to any accident, arising out of the insured vehicle and therefore, the Company is not liable to pay compensation. The Claims Tribunal has rejected the case of the Insurance Company and quantified the compensation. Being aggrieved by the finding, fixing liability, the Insurance Company has preferred an appeal to the High Court. Primarily, they submitted that since no accident had occurred, arising out of use of vehicle, the claim was not maintainable. Without prejudice to the above, the Insurance Company has contended that even taking it for granted that the liability could be fastened on the Company, it can be done only to the limited extent, as per the provisions of the Workmen's Compensation Act. Finding that the said plea had not been raised by the Insurance Company before the Claims Tribunal and that the same has been raised for the first time before the High Court, the Delhi High Court rejected only the plea of limited liability. On the question, as to whether the death was not due to the accident, arising out of and use of motor vehicle and whether the legal representatives of the deceased, father, widow and minor children, were entitled to compensation or not, under Section 163-A of the Motor Vehicles Act, 1988, after considering the judgments in Shivaji Dayanu Patil v. Vatschala Uttam More reported in 1991 ACJ 777, Rita Devi v. New India Assurance Co. Ltd., reported in 2000 ACJ 801 (SC), Samir Chanda v. Managing Director, Assam State Transport Corporation reported in 1998 ACJ 1351 (SC), etc., the Delhi High Court held that the accident in question arose out of use of motor vehicle and therefore, the legal representatives of the deceased were entitled to maintain the claim, under Section 163-A of the Act. The decisions referred in Munesh Devi's case, are extracted hereunder:

“(i) In Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 AC J 777, there was a collision between a petrol tanker and a truck due to which the petrol tanker went off the road and fell at a distance of about 20 feet from the highway leading to leakage of petrol which collected nearby. Later an explosion took place in the petrol tanker resulting in fire. Number of persons who assembled near the petrol tanker sustained burn injuries and few of them

succumbed to the injuries. The victims filed the Claim Petitions which were dismissed by the Claims Tribunal on the ground that the explosion and the fire had no connection with the accident, and was altogether an independent accident. The Appeal was allowed by the learned Single Judge of the High Court holding that the explosion was a direct consequence of the accident. The Division Bench of the High Court affirmed the findings of the learned Single Judge against which the matter came up before the Supreme Court.

The Supreme Court dismissed the Special Leave Petition holding that the explosion and fire resulting in injuries and death was due to the accident arising out of the use of the motor vehicle. The findings of the Supreme Court are reproduced hereunder:

"25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in Section 92-A, covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor Lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.

35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression

"caused by" was used in Sections 95(1)(b)(i) & (ii) & 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the Petrol Tanker No. MKL-7461.

(ii) In *Rita Devi v. New India Assurance Co. Ltd.*, 2000 AC J 801 (SC), the deceased was employed to drive an autorickshaw for ferrying

passengers on hire. On the fateful day, the autorickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the Police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the autorickshaw claimed compensation from the Insurance Company for the loss of autorickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation. The question as to whether the case of murder would be covered was also gone into. Paras 9 & 10 are relevant and are quoted below:

"9. A conjoint reading of the above two Sub-clauses of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the Claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such

murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

(iii) In *Samir Chanda v. Managing Director, Assam State Trans. Corporation*, 1998 ACJ 1351 (SC), the Apex Court upheld the claim for compensation in respect of injuries suffered by the claimant due to bomb blast inside the vehicle relying on the decision given in *Shivaji Dayanu Patil v. Vatschala Uttam More*, 1991 ACJ 777.

(iv) In *Kaushnuma Begum v. New India Assurance Co. Ltd*, 2001 ACJ 428, the Supreme Court held that the Principle of Strict Liability propounded in *Rylands v. Fletcher*, (186-73) All ER Rep 1, was applicable in claims for compensation made in respect of motor accidents. The relevant findings of the Supreme Court are reproduced hereunder:

"72. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in *Rylands v. Fletcher* (*supra*) can apply in motor accident cases. The said Rule is summarised by Blackburn, J. thus:

"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the Plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule

in Rylands v. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the Rule of Strict Liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the Claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under 'no fault liability' can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the Claimants of the compensation payable to them."

(v) In National Insurance Co. Ltd v. Shiv Dutt Sharma, 2004 ACJ 2049 (J&K), two sets of claims were made in this case; one relating to the accident in a Bus and the other relating to an accident where bullets of terrorists killed the passengers of a Bus. The Jammu and Kashmir High Court held as under:

"45. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

"(i) That a passenger travelling in a Bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC), and the latter decisions noticed above;

(ii) That even if a person is not actually

in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC). Therefore, merely because some of the victims were taken out of the Bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained."

(vi) In DTC v. Meena Kumari, 2010 (3) ACC 72, a bomb blast in a DTC Bus resulted in the death of the deceased, this Court discussed the law with respect to the liability of DTC to pay compensation to the legal representatives of the deceased and held that the accident arose out of the use of motor vehicle and, therefore, the Claimants were entitled to compensation under Section 163-A of the Motor Vehicles Act, 1988.

(vii) In United India Insurance Co. Ltd. v. Mosina, MAC.App. No. 73 of 2006 decided on 25.11.2011, this Court held that this issue was no moreres integra in view of the judgment of the Supreme Court in Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC). The findings of this Court are as under:

"79. That apart even legally also this contention is untenable and issue is no more res integra. Way back in the year 2000, the Apex Court had occasioned to discuss the identical issue in Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ 810 (SC). In that case the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the autorickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the autorickshaw in question was never traced out. The owner of the autorickshaw claimed compensation for the Insurance Company for the loss of autorickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation.

20. The Court interpreted the expression "arising out of the use of the motor vehicle" in the context of death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle and gave it a very wide interpretation even to include the situation where a "murder" can be treated as accident in a given case. Following discussion on this aspect from the aforesaid judgment is worthy of a quote:

"A conjoint reading of the above two sub-clauses of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus, it is clear, if it is established by the Claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.

The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But, there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

Applying the principles laid down in the above cases

to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw."

While taking this view, the Court again emphasized that having regard to the fact that it was a beneficial legislation enacted with a view to confer a benefit of expeditious payment of a limited amount, same has to be given particular interpretation.

21. The plain language of Section 163-A of the Act disclosed that the liability can be of the owner of the motor vehicle or the authorised Insurer. Thus, the Insurer is also made liable if the Insurance Policy is taken. In the present case not only the vehicle in question was insured the Insurance cover/Policy placed on record further reveals that the premium was also paid for driver and helper. In these circumstances, the Insurance Company, cannot shy away from its liability when owner of the vehicle had taken Insurance in respect of driver and helper by paying premium on that account as well. It is also to be noted that such a plea was not even taken before the learned MACT and is raised for the first time in this Court."

24. It is well settled that Motor Vehicles Act, 1988 is a beneficial legislation. Reference can be made to a decision of the Apex Court in Smt. Rita Devi and others v. New India Assurance Co. Ltd., reported in AIR 2000 SC 1930, wherein, while construing the provisions of the Act, the Supreme Court held that it is to advance the beneficial purpose underlying the enactment in preference to a construction, which tends to

deviate the purpose.

25. In Shivaji Dayanu Patil and another v. Vatchala Utham More reported in 1991 ACJ 177, the Apex Court reiterated that in the matter of interpretation of a beneficial legislation, the approach of the Courts should be to advance the beneficent purpose.

26. At Paragraph 56 of the judgment in Deepal Girishbhai Soni v. United India Insurance Company Ltd., reported in 2004 (5) SCC 385, the Supreme Court held that,

"It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. [See High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors. [JT 2003 (3) SC 50], Indian Handicrafts Emporium and Others vs. Union of India and Others [(2003) 7 SCC 589], Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd. [JT 2003 (9) SC 109 = 2003 (9) SCALE 713 and Ashok Leyland Vs. State of Tamil Nadu and Anr. [2004 (1) SCALE 224]. The object underlying the statute is required to be given effect to by applying the principles of purposive construction." It is also to be noted, that there is absolutely no rebuttal evidence.

27. In the light of the above discussion and the decisions stated supra, this Court is of the view that the finding of the Claims Tribunal, fixing negligence on the driver of the bus, bearing registration No.TN-21-P-9909, insured with the appellant company, cannot be said to be perverse or without any evidence or against the principles of law, to be followed, while arriving at the conclusion on negligence. Therefore, finding of the Tribunal, on the aspect of 'negligence', is confirmed.

28. In so far as the determination of the age, income and addition of certain sum under the head 'future prospects' is concerned, the Claims Tribunal, upon considering the entries made in Ex.P-7-Postmortem Certificate, fixed the age of the deceased as 21 years. Determination of age on the basis of Post-Mortem Certificate cannot be said to be faulty, in view of the judgments in Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 (4) LW 20, and The Managing Director, Tamilnadu State Transport Corporation, Madurai v. Mary [2005 (5) CTC 515].

29. Though mother of the deceased claimed that from chicken stall business her son was earning Rs.10,000/- per month, the same was not proved by any supportive document. However, taking note of the decisions of the Hon'ble Supreme Court in Syed Sadiq and Others v. Divisional Manager, United

India Insurance Company Limited, reported in 2014 ACJ 627, the Claims Tribunal fixed the monthly income of the deceased as Rs.6,500/-, for the purpose of computing the loss of dependency. Determination of the monthly income on the basis of the above decision of the Hon'ble Apex Court, cannot be held to be erroneous, for the reason that in Syed Sadiq's case, cited supra, though the accident occurred in the year 2008, the Hon'ble Supreme Court, taking note of the cost of living and other economic factors, fixed the monthly income as Rs.6,500/-. In the case on hand, the accident has occurred on 28.06.2006.

30. As regards the contention of the learned counsel for the appellant that the Claims Tribunal ought not to have added 50% of the income under the head 'future prospects' on the ground that the deceased had no permanent job, this Court is not inclined to accept the same.

31. Though it is the case of Mr. Srinivasan Ramalingam, learned counsel for the appellant-Insurance Company, that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 50% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason, that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.

32. Judicial notice can also be taken, that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically, electricity and water charges, are on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever.

33. The deceased was aged 21 years and, therefore, application of '18' multiplier, for the purpose of computing loss of dependency, is as per the decision of the Hon'ble Supreme Court. As the deceased was a bachelor, half of the

income has been deducted towards the personal and living expenses. Loss of dependency of Rs.10,53,000/- (Rs.9750x12x18x1/2) cannot be said to be contrary to the principles of law and the decision of the Hon'ble Supreme Court.

34. As regards the funeral expenses of Rs.25,000/- awarded to the mother, the Claims Tribunal has followed the decision in *Rajesh and Others v. Rajbir Singh and Others*, reported in CDJ 2013 SC 485, wherein the Hon'ble Supreme Court observed that funeral expenses not only include the fee paid in crematorium or cemetery, but also includes religious practices and conventions performed on death in family. Hence, funeral expenses is reasonable. In addition to the above, the Claims Tribunal has awarded a sum of Rs.5,000/-, towards loss of estate.

35. Perusal of the award indicates, that though the sole respondent/mother has lost love and affection of her son, aged about 21 years, no compensation has been awarded, under the head "loss of love and affection". Further, no compensation has been awarded under the heads "transportation" and "damage to clothes and articles". Therefore, the sum of Rs.10,83,000/-, awarded to the mother of the deceased, aged about 21 years, cannot, at any stretch of imagination, be said to be a manja or bonanza, warranting reduction. As rightly observed by the Hon'ble Apex Court in *Rajesh's case*, cited supra, Courts have to attempt to equate misery suffered by injured/dependants of the deceased with compensation so that injured/dependants do not suffer hardship in life on account of loss of income earned by the victim. What is "just compensation" has also been considered by the Hon'ble Supreme Court in some of the decisions, which are extracted hereunder :

(i) In *R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd.*, reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

(ii) In yet another decision in *Divisonal Controller, KSRTC v. Mahadeva Shetty* and another reported in (2003) 7 SCC 197, in Paragraph 12, the Supreme Court has held that,

"Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss,

expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

In Paragraph 15 of the said judgment, the Supreme Court has held that,

"Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

(iii) In Nizam Institute of Medical Sciences v. Prasanth S.Dhananka reported in (2009) 6 SCC 1 = 2010 ACJ 38 (SC), the three-Judge Bench was dealing with a case arising out of the complaint filed under the Consumer Protection Act, 1986. While enhancing the compensation awarded by the National Consumer Disputes Redressal Commission from Rs.15 lakhs to Rs.1 crore, the Bench made the following observations which can appropriately be applied for deciding the petitions filed under Section 166 of the Act:

"We must emphasise that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. Sympathy for the victim does not, and should not, come in the way of making a correct assessment, but if a case is made out, the court must not be chary of awarding adequate compensation.

The "adequate compensation" that we speak of, must to some extent, be a rule of thumb measure, and as a balance has to be struck, it would be difficult to satisfy all the parties concerned. ...At the same time we often find that a person injured in an accident leaves his family in greater distress vis-à-vis a family in a case of death. In the latter case, the initial shock gives way to a feeling of resignation and acceptance, and in time, compels the family to move on. The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity." (emphasis supplied)

(iv) In *Reshma Kumari and others v. Madan Mohan* reported in (2009) 13 SCC 422, this Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort

of hypotheses or guess work may be inevitable. That may be so.

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben*, 2008 ACJ 1097 (SC), held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor." (emphasis supplied)

36. In the absence of the Claims Tribunal awarding just and reasonable compensation under the heads "loss of love and affection", "transportation", and "damages to clothes and articles", and the decisions extracted supra, it is the considered view of this Court, that the appellant insurance company has not made out any case either on the finding of negligence fixed on the bus, bearing registration No.TN-21-P-9909, insured with the appellant company, or on the quantum of compensation awarded to the claimant/mother of the deceased. Thus, the challenge made by the appellant-insurer, both on the finding of negligence and the quantum of compensation, is liable to be rejected, as not tenable.

37. Accordingly, this Civil Miscellaneous Appeal is dismissed, with a direction to the appellant-insurance company, to deposit the entire award amount, with proportionate interest and costs, less the statutory deposit made, to the credit of M.C.O.P.No.4734 of 2008, on the file of Motor Accident Claims Tribunal (V Judge, Court of Small Causes), Chennai, within a

period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the entire amount, by making necessary application before the Tribunal. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-III)

True Copy

Sub Assistant Registrar

To

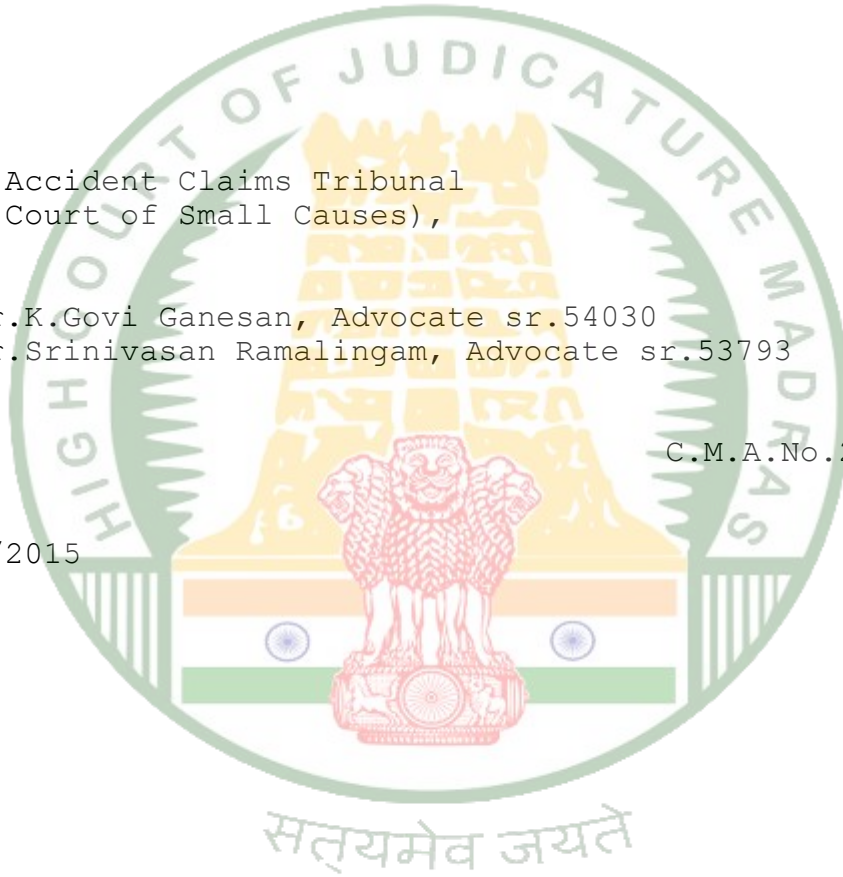
The Motor Accident Claims Tribunal
(V Judge, Court of Small Causes),
Chennai.

+1cc to Mr.K.Govi Ganesan, Advocate sr.54030

+1cc to Mr.Srinivasan Ramalingam, Advocate sr.53793

C.M.A.No.2217/2015

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