

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2103 of 2005

With

FIRST APPEAL NO. 334 of 2006

With

FIRST APPEAL NO. 4765 of 2007

With

FIRST APPEAL NO. 3237 of 2005

With

FIRST APPEAL NO. 569 of 2005

With

FIRST APPEAL NO. 2455 of 2008

With

FIRST APPEAL NO. 1504 of 2005

With

FIRST APPEAL NO. 16 of 2006

With

FIRST APPEAL NO. 2473 of 2014

With

FIRST APPEAL NO. 2474 of 2014

With

FIRST APPEAL NO. 1433 of 2014

With

FIRST APPEAL NO. 1434 of 2014

With

FIRST APPEAL NO. 1336 of 2014

With

CROSS OBJECTION NO. 84 of 2008

In

FIRST APPEAL NO. 3237 of 2005

With

MISC.CIVIL APPLICATION NO. 2532 of 2014

In

FIRST APPEAL NO. 5417 of 2008

With

CIVIL APPLICATION NO. 8161 of 2014

In

FIRST APPEAL NO. 2473 of 2014
With
CIVIL APPLICATION NO. 8162 of 2014
In
FIRST APPEAL NO. 2474 of 2014

With
CIVIL APPLICATION NO. 5637 of 2014
In
FIRST APPEAL NO. 1433 of 2014
With
CIVIL APPLICATION NO. 5638 of 2014
In
FIRST APPEAL NO. 1434 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD.....Appellant(s)

Versus

KALABHAI MAGANBHAI KOLI & 2....Defendant(s)

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Appearance:

MR VIBHUTI NANAVATI, MR SUNIL B PARIKH, MR KK NAIR, MR MAULIK J SHELAT, MR HG MAZMUDAR, MR VC THOMAS, MS MEGHA JANI, ADVOCATES for the respective Insurance Companies.

MS NEHA SHUKLA, MR MURALIN DEVNANI, MR RAXIT J DHOLAKIA, MR DAKSHESH MEHTA, MR HM PRACHCHHAK, MR PB GOSWAMI, MR JV JAPEE, MR PANKAJ K SONI, MURALIN DEVNANI, MR PRAVIN GONDALIA, MR VASANT SHAH, MR BS KHATANA ADVOCATES for the claimants-opponents

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 17/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals are placed before the Division Bench on references made by the learned Single Judges on certain questions of law. A brief background would be needed to appreciate the questions referred.
2. All the appeals arise out of the judgements passed by the Motor Accident Claims Tribunals in claim petitions filed by the claimants under section 166 of the Motor Vehicles Act, 1988. ("the MV Act" for short) for death or bodily injuries caused in motor accidents. These claimants had also claimed compensation under section 140 of the MV Act on the basis of no fault liability. The insurance companies who had insured the vehicles involved in the motor accidents had either raised statutory defences available under section 149 of the MV Act or in some cases differed

their defences to be raised at the time of contesting the claim petitions under section 166 of the Motor Vehicles Act. The Claims Tribunal while awarding compensation under section 140 of the MV Act in most of the cases where such defence was taken, made endorsements differing the consideration of statutory defences raised by the insurance companies at the time of deciding the claim petitions under section 166 of the MV Act. The issue pertains to the applicability of the principle of res judicata insofar as the defences of the insurance companies are concerned while the Claims Tribunals proceeded to decide the main claim petitions under section 166 of the MV Act.

3. In case of **Munshiram D. Anand v. Pravinsinh Prabhatsinh Anand Society Gedh, Jamnagar** reported in AIR 1997 Gujarat 60, learned Single Judge of this Court opined that lodging of the claim petition under section 166 of the Motor Vehicles Act is not a condition precedent for filing petition under section 140 of the Act on the basis of no fault liability. Similar view was expressed by the learned Single Judge of this Court in case of **United India Insurance Co. Ltd. v. Maganlal Hirabhai Patel and others** reported in 1999 ACJ 268.
4. In case of **New India Assurance Co. Ltd, Ahmedabad v. Mithakhan Dinakhan Notiyar and ors.** reported in 1995(2) GLR 1111, learned Single Judge held that the proceedings under section 140 of the Motor Vehicles Act are summary in nature and the Claims Tribunal is not required to decide the objections raised by the insurance company by permitting the insurance company to lead evidences. This

view was followed and reiterated later on by a learned Single Judge in case of **Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak and anr.** reported in 1998(2) GLR 1199. These decisions in case of **Mithakhan Dinakhan Notiyar and ors.**(supra) and **Mahendrakumar Kalyanjibhai** (supra) came up for consideration before the Full Bench of this Court in case of **United India Insurance Co. Ltd. v. Kadviben Udabhai Rathwa and Anr.** reported in 2006(2) GLH 106. The Full Bench approved the view expressed by the learned Single Judges in the said decisions.

5. In case of **Yallwwa and ors. v. National Insurance Co. Ltd and anr.** reported in AIR 2007 Supreme Court 2582, the Supreme Court in context of the question whether an order passed by the Claims Tribunal under section 140 of the Motor Vehicles Act is appealable under section 173 or not, made certain observations suggesting that in the proceedings under section 140 of the Act, the insurance company could raise its statutory defences available under section 149(2) and the Claims Tribunal would be duty bound to consider the same.
6. In case of **United India Insurance Co. Ltd. v. Sidikbhai Ukabhai Solanki and anr.** reported in 2012(2) GLH 465, the Claims Tribunal had allowed the claimants' application under section 140 of the MV Act. However, at the stage of deciding claim petition under section 166, the Tribunal absolved the insurance company on the grounds that the injured were travelling in the goods vehicle without carrying their goods and that the driver of the vehicle did

not have a valid license. The learned Single Judge held that if at the stage of proceedings under section 140 of the Act, all questions required to be raised by the insurance company have not been raised or those raised have been decided against the insurance company and the insurance company has not challenged such order of the Claims Tribunal, it would be precluded from raising the same questions at the subsequent stage of the proceedings under section 166 of Motor Vehicles Act. The decision in case of **Mithakhan Dinakhan Notiyar and ors.**(supra) was brought to the notice of the learned Single Judge. The learned Judge was however, of the opinion that said decision did not have bearing on the issue of res judicata. When a similar issue was presented before another learned Single Judge in case of **United India Insurance Company Ltd. v. Parbatsinh Udesinh Makwana and ors.**, he was of the opinion that the decision of the Full Bench in case of **Kadviben Udabhai Rathwa and Anr.**(supra) would have considerable bearing on the issue at hand which was not noticed in the said judgement. The learned Single Judge was of the opinion that the appeals be placed before the Division Bench. He therefore, made his order of reference dated 12.8.2014 in First Appeal No.2473/2014 and allied matters. This was the first order of reference. Subsequently some more proceedings were placed before the learned Single Judge who had expressed the opinion in case of **Sidikbhai Ukabhai Solanki and anr.**(supra), Referring to and relying heavily on the decision of Supreme Court in case of **Yallwwa and ors.**(supra), learned Single Judge reiterated his opinion that principles of res judicata would under such circumstances apply. However, in view

of doubt already raised by another learned Single Judge making a reference to the Division Bench, the learned Judge on 18.9.2014 in MCA No.2532/2014 and connected matters in case of **Patel Haribhai Jethabhai v. New India Assurance Co. Ltd and ors.** referred the following two questions for consideration of the Division Bench :

"1. If at the stage of a proceeding under section 140 of the Motor Vehicles Act, no plea is taken either by the insurance company or by the owner of the errant vehicle that either the vehicle was not involved in the accident or that the vehicle was not covered by the insurance policy or that there has been any breach of the conditions of insurance disentitling the insured to claim the benefit of insurance, or inspite of taking such plea, if they suffer an award making the owner and the insurance company jointly liable for payment, whether in the subsequent proceeding under section 166 of the Act, the Tribunal will be precluded from deciding such issue by operation of the doctrine of *res judicata* or constructive *res judicata*.

2. If a plea as to non-involvement of the vehicle or invalidity of policy or breach of condition in the policy is taken by the insurance company, whether it is the duty of the Tribunal below to decide such issue by taking evidence in a proceeding under section 140 of the Act."

That is how these proceedings are placed before us for answering the reference.

7. As can be seen from the above discussion, the central question for consideration is of applicability of principle of *res judicata* in the proceedings under section 166 of the MV Act on issues which were either raised and decided against the insurance company or which though ought to have been raised, were not raised.

8. Learned advocates appearing for both the sides have relied on several decisions on the question of defences that may be available to an insurance company at the stage of deciding application under section 140 of the MV Act. We would refer to these decisions at appropriate stages. Counsel for the parties have also drawn our attention to certain decisions of the Supreme Court on the question of principles of res judicata. We may presently refer to such judgements.
9. On behalf of the insurance companies, it was vehemently contended that the proceedings under section 140 of the MV Act are vitally different and independent of the proceedings under section 166 of the MV Act. Any finding or decision of the Claims Tribunal arrived at such interim stage would not bind the parties at the later stage of the proceedings. It was further contended that at the stage of deciding application under section 140 of the MV Act, the Claims Tribunal is not required to frame any issues. The decision which is rendered without framing the issues would not act as res judicata in subsequent proceedings.
10. Our attention was drawn to the decision of Supreme Court in case of **Ramji Gupta and Anr. v. Gopi Krishan Agrawal(D) and ors.** reported in AIR 2013 Supreme Court 3099 to canvass that the finding which is collateral or incidental, while deciding substantial issues would not act as a res judicata. Reference was made to the decision of the Supreme Court in case of **Erach Boman Khavar v. Tukaram Sridhar Bhat and another** reported in AIR 2014

Supreme Court 544 in which it was observed that the decision which was rendered on concession would not act as a res judicata. Decision in case of **Sajjadanashin Sayed MD. B.E. Edr (D) by L.Rs. v. Musa Dadabhai Ummer and others** reported in AIR 2000 Supreme Court 1238 was relied to advance a contention that a matter which was not directly or substantially at issue but was decided collaterally or incidentally would not act as res judicata.

11. On the other hand, on behalf of the claimants, Shri Prachhak contended that the issue of res judicata would squarely apply in facts of the case. The insurance companies either did not raise all its defences at the stage of application under section 140 of the MV Act and if raised such defences were rejected by the concerned Claims Tribunals. Basing reliance on the decision of the Supreme Court in case of **Shiv Chander More v. Lieutenant, Governor** reported in JT 2014 (4) SC 143, he contended that principles of constructive res judicata would apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject matter of the litigation. Like-wise, reliance was placed on the decision of the Supreme Court in case of **Barkat Ali v. Badri Narain(D) by Lrs.** reported in AIR 2008 Supreme Court 1272 in which it was observed that the principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stages of the same proceedings and the same Court is precluded from going into that question again which has been

decided or deemed to have been decided by it at an early stage.

12. Since issues involved had considerable importance, at our request learned advocate Shri MTM Hakim who regularly appears for the claimants had presented a list of authorities along with his notes. The gist of his notes was that at the stage of deciding application under section 140 of the MV Act, the statutory defences are not available to insurance companies and that therefore, not raising such defences would not act as res judicata.

13. The principles of res judicata are statutorily embodied in section 11 of the Code of Civil Procedure which provides that no Court shall try any suit or issue in which the matter is directly or substantially in issue, has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Explanation IV to section 11 refers to the concept of constructive res judicata and provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

14. It is undisputed that though the provisions of Code of Civil Procedure do not strictly apply to the proceedings for

grant of compensation under the MV Act, the general principles of res judicata would preclude a party from raising identical disputes in any other proceedings if such issues have been substantially or directly at issue in earlier proceedings decided by the court of competent jurisdiction. As held by the Supreme Court in case of **Shiv Chander More**(supra), the principles of constructive res judicata would apply in connection to not only what is actually adjudicated or determined but which might and ought to have been litigated but not raised by the parties. Likewise, as held by the Supreme Court in case of **Barkat Ali**(supra), such principle of res judicata would apply between the same parties not only in respect of separate proceedings but general principles would apply at subsequent stage of the same proceedings precluding the Court from going into that question again which has been decided or deemed to have been decided by it at an earlier stage. If therefore, certain defences were available to the insurance company at the stage of deciding an application under section 140 of the Act, the decision rendered by the Claims Tribunal on such defences would certainly bind the parties at a later stage of the proceedings and preclude the insurance company from raising same defence once all over again while defending the claim petition under section 166 of the MV Act. Same would be the result if the insurance company though ought to have, did not raise such defences. In other words, if such defences were available but not raised, the same would preclude the insurance company from raising and the Court from deciding the same at a later stage of the claim proceedings. One clarification however, is needed. If the insurance

company has raised a defence but the Claims Tribunal has not decided the issue, either differing it for later consideration or otherwise, nothing would preclude the insurance company from raising such a defence at the stage of application under section 166 of the MV Act. Constructive res judicata would take in its fold an issue which ought to have been raised but not raised and not an issue which though raised, is not decided by the Court.

15. The contention that the Claims Tribunal decides such matters without formally raising the issues as is provided under the rules framed by the State Government and that therefore, the principles of res judicata would not apply, would not be correct. What section 11 of the Code of Civil Procedure refers to is the matters which are directly and substantially in issue in a former suit between the same parties. It does not refer to formal issues being framed by a Court before deciding the matter which was otherwise substantially and directly in issue. We are not on the question of propriety of a Court rendering its decision on the matter without formally raising an issue. We are on the question of the binding effect of such a decision on the subsequent proceedings or at subsequent stages of the same proceedings between the same parties. In our understanding therefore, the crux of the question is were such defences available to the insurance company at the stage of deciding application under section 140 of the MV Act. If such defences were available, the decision of the Tribunal on such disputes raised by the insurance company would act as resjudicata at further stages of deciding application under section 166 of the Act. By virtue

of principle of constructive resjudicata, so also would be the consequence if a defence which though available at that stage, was not raised by the insurance company. On the other hand, if certain defences were simply not available to the insurance company at the stage of application under section 140, non raising of such defences or the Claims Tribunal differing such issues for later consideration at the stage of application under section 166 of the Act, would not preclude the insurance company from agitating such questions in the proceedings under section 166 of the Act.

16. At this stage, we may notice relevant statutory provisions. Chapter X of the Motor Vehicles Act, 1988, pertains to the liability without fault in certain cases. Section 140 contained in the said Chapter pertains to liability to pay compensation in certain cases on the principles of no fault. It is a successor to section 92A of the earlier Motor Vehicles Act by virtue of which for the first time superseding the general law of torts, the concept of compensation even in case of no fault of the driver of the motor vehicles was introduced. The statement of objects and reasons for introduction of such provision gives insight into the background in which this provision was introduced. It was recognised that there had been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the road. The incidences of road accidents by motor vehicles had reached serious proportions. Many of the victims of road accidents were pedestrians belonging to the less affluent sections of the society. The compensation

could be claimed under the MV Act only if such accident could be shown to have taken place as a result of wrongful act or negligence on part of the owners or drivers of the vehicles concerned. It was noticed that having regard to the circumstances in which the road accidents take place, in number of cases, it was difficult to secure adequate evidence to prove the negligence. The legislature also recognised that there were number of instances of what is referred to as 'hit and run' accidents. It was therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on part of the owner or driver of the vehicle and secondly, for compensation by way of solatium in cases in which the identify of the vehicle causing an accident is unknown. The bill was therefore, introduced to give effect to various proposals including providing for payment of compensation in certain cases of accidents without proof of fault or negligence on part of the owner or driver of the MV Act.

17. Section 140 of the MV Act reads as under :

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

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

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

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

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

(5) Notwithstanding anything contained in sub-section(2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under the section or under section 163A.”

18. Sub-section(1) of Section 141 provides that right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right except under section 163A to claim compensation in respect thereof under any other

provision of the MV Act or of any other law for the time being in force. Sub-section(2) of section 141 provides that a claim for compensation under section 140 shall be disposed of as expeditiously as possible and where compensation is claimed in respect of death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of in the first place. Sub-section(3) of section 141 provides for adjustment of compensation received by the claimants under section 140 against the compensation computed on the basis of fault liability in the following manner :

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

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

19. Section 144 which is also contained in Chapter X provides that the provisions of the said Chapter shall have effect notwithstanding anything contained in any other provision of the Act or of any other law for the time being in force. Section 149 of the MV Act pertains to the duty of insurers to satisfy judgments and awards against persons insured against third party risks. Sub-section(2) of section 149, as is well known, allows the insurance company to defend itself on the grounds mentioned therein such as,

there has been a breach of a specified condition of the policy enumerated in the said provision, that the policy is void on the ground that it was obtained by nondisclosure of a material fact or by a representation of fact which was false in some material particular.

20. Section 163A of the Act pertains to special provisions as to payment of compensation on structured formula basis. Sub-section(1) of section 163A provides that notwithstanding anything contained in the Act or in any other law for the time being in force, or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

21. Chapter XII of the MV Act pertains to the Claims Tribunal. Section 165 envisages constitution of Claims Tribunal by the State Government by issuing notification in the official Gazette. Section 166 of the MV Act pertains to application for compensation. Sub-section(1) thereof envisages an application being made by the claimants for compensation arising out of an accident. Sub-section(2) of section 166 pertains to place of suing and specifies the Claims Tribunal which would have jurisdiction to entertain such a claim petition. On such application that may be filed under section 166, the Tribunal would pass award under section 168 of the Motor Vehicles Act.

22. In exercise of rule making powers, the State Government has promulgated Gujarat Motor Vehicles Rules, 1989 (here-in-after referred to as “the said Rules of 1989”). Chapter X of the said Rules of 1989 pertains to Claims Tribunals. Rule 211 contained in the said Chapter lays down the procedure regarding the compensation arising out of accidents. Sub-rule(1) of the said Rules of 1989 provides that an application for compensation under sub-section (1) of section 166 shall be made to the Claims Tribunal in the prescribed format and shall contain the particulars specified therein. Rule 220 of the said Rules of 1989 pertains to examination of opposite party. Rule 221 requires the Claims Tribunal to frame and record issues. Rule 222 provides that after framing the issues, the Claims Tribunal shall proceed to record evidence thereon which each party may desire to produce. Rule 223 and 224 pertain to summoning of witnesses and recording of evidence respectively. As per section 228, the Claims Tribunal in its judgement shall record concisely finding on each of the issues framed and its reasons for such finding. Thus detailed procedure for conduction an application of claimant under section 166 of the Act is provided in Rules 211 to 229.

23. Rule 231 on the other hand prescribes procedure regarding compensation on the principle of no fault and reads as under :

“231. Procedure regarding compensation on the principle of no fault.- Notwithstanding anything contained in rules 211 to 230 and 232 in the case of a claim for compensation under Chapter X of the Act, the procedure shall be as

follows, namely:-

(1) An application for compensation shall be made to the Claims Tribunal in Form CWF, in triplicate, and shall contain the particulars specified in that form.

(2) The application shall be accompanied by a fee of ten rupees in the form of Court fee stamps, and the following documents, namely:-

- (i) First Information Report;
- (ii) Injury certificate or Post-mortem report in case of death;
- (iii) Heirship certificate in case of death;
- (iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident;
- (v) Particulars or insurance of the vehicle involved in the accident.

(3) No fees shall be charged for process of application for compensation made under this rule.

(4) The Claims Tribunal shall dispose of the application for compensation within six weeks from the date of receipt of such application.

(5) For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973.

(6) The Claims Tribunal shall not reject any application made under this rule on the ground of any technical defect, but shall give notice to the applicant and get the defect rectified.

(7) For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall obtain whatever information and document considered necessary by it from the police, medical and other authorities.

(8) On receipt of the application for compensation, the Claims Tribunal shall give notice to the owner, and the insurer, if any, of the vehicle involved in the accident, directing them to appear on a date not later than ten days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the application for compensation. The Claims Tribunal shall state in such notice that, in case they fail to appear on such appointed date, the Tribunal shall proceed *ex parte* on the presumption that they have no contention to make against the award of compensation.

(9) The Claims Tribunal shall proceed with the application for compensation, on the basis of-

- (i) First Information Report;
- (ii) Injury certificate or Post-mortem report in case of death;
- (iii) Registration certificate of the motor vehicle involved in the accident;
- (iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks;
- (v) the nature of the treatment given by the medical officer who has treated the victim.

(10) The Claims Tribunal in passing the orders shall make an award of compensation of twenty five thousand rupees in respect of the death, and of twelve thousand rupees in respect of the permanent disablement, to be paid by the owner or insurer, of the vehicle involved in the accident.

(11) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

(12) The Claims Tribunal, in passing the orders, shall also direct the owner or insurer, of the vehicle involved in the

accident, to pay the amount of compensation to the claimant within thirty days from the date of the said orders.

(13) Where the Claims Tribunal thinks that the actual payment to the claimant is likely to take time because of the identification and the fixation of the legal heirs of the deceased, the Claims Tribunal may call for the amount of compensation awarded, to be deposited with the Tribunal, and then proceed with the identification of the legal heirs for deciding the payment of compensation to each of the legal heirs.”

24. From the above statutory provisions, it can be seen that section 140 of the MV Act which is a successor of section 92A of the repealed Motor Vehicles Act of 1939 is in the nature of departure from the basic principles for compensation of injury suffered by a person on account of tortuous action of another, This departure was needed since the legislature realised that on account of growing road network and increased vehicular traffic, the incidences of serious bodily injuries and fatal accidents arising out of motor vehicles had grown to alarming proportions. In large number of cases, poor pedestrians or their heirs would have no means of proving the negligence of the driver of the motor vehicle in causing such accident. Initially the limit of compensation in case of death for no fault liability cases was Rs.15,000/-. This was revised from time to time and increased to Rs.50,000/- in death cases. The MV Act itself is a social welfare legislation. This provision was added to ensure strict enforcement of road safety and as a measure of social justice. The concept of a person using a motor vehicle owing at-least a limited

liability to compensate a person receiving serious injuries or his heirs in case of death even though his negligence may not have contributed to the accident was statutorily recognised. While enacting such a provision, legislature envisaged that the compensation payable under it would be in addition to and not in derogation of any other provisions contained in the said Act or any other law for the time being in force. It only made the compensation payable under section 140 subject to adjustment at a later stage if any claim was awarded under section 166 of the MV Act. This adjustment was also limited. If the compensation awarded under section 166 is equal to or higher than the compensation already paid under section 140, such amount would be adjusted to arrive at the net payable to the claimants. If for some reason, the compensation already paid under section 140 is more than what is found payable under section 166 of the Act, there is no provision to reverse such a situation.

25. There are several provisions in the statute which would indicate that the legislature desires that the proceedings under section 140 of the MV Act would be disposed expeditiously and summarily. Sub-section(3) of section 140, as noted, provides that in an application under sub-section(1), the claimants shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Sub-section(2) of section 141 provides that a claim for compensation under section 140 would be

disposed of as expeditiously as possible and where compensation is claimed in respect of death or permanent disablement also in pursuance of any right on the principle of fault, the claim for compensation under section 140 would be disposed of in the first place. These statutory provisions contained in the Act have been further amplified by the procedure laid down in Rule 231 of the said Rules of 1989. Sub-rule(4) of Rule 231 requires that the Claims Tribunal shall dispose of the application for compensation within six weeks from the date of receipt of such application. As per sub-rule(5) of Rule 231, for adjudicating and awarding the claim, the Claims Tribunal would follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973. As per sub-rule(6) of Rule 231, the Claims Tribunal would not reject any application made under this rule on the ground of any technical defect, but would enable the applicant to rectify the defect. As per sub-rule(7) of Rule 231 for the purpose of adjudicating and awarding the claim, the Claims Tribunal would obtain whatever information and document considered necessary by it from the police, medical and other authorities. Sub-rule(8) of Rule 231 sets out a timetable for the Tribunal to follow while issuing notice of claim under section 140. In case any of the opponents failed to appear before the Tribunal, the Tribunal would proceed ex parte on the presumption that they have no contention to make against the award of compensation. Sub-rule(9) of Rule 231 provides that the Claims Tribunal shall proceed with the application for compensation, on the basis of-

(i) First Information Report;

- (ii) Injury certificate or Post-mortem report in case of death;
- (iii) Registration certificate of the motor vehicle involved in the accident;
- (iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks;
- (v) the nature of the treatment given by the medical officer who has treated the victim.

26. It is well settled that an application under section 140 of the Motor Vehicles Act can be filed without filing any proceedings under section 166 of the Act. As per section 141 however, if such application is filed along with any application for claim under fault liability clause, application under section 140 would be decided first. The procedure laid down in the said Rules of 1989 makes it abundantly clear that such application under section 140 of the Act be it standalone application or coupled with fault liability claim under section 166 of the Act, has to be decided summarily and peremptorily.

27. Though often referred to as an interim application, compensation under section 140 cannot be treated as interim in nature. In a given case, such an application may be filed without any further claim for compensation on fault liability clause. In such a situation, the award passed by the Claims Tribunal would achieve finality. If it is coupled with the enlarged claim on the basis of fault liability, no fault claim application would be decided first.

The compensation awarded under such application would be adjusted but with no possibility of recovery if the Claims Tribunal awards lesser sum under section 166 of the Motor Vehicles Act.

28. When the legislature, Union as well as the State have recognised a dire need for granting compensation on the basis of no fault in case of death or permanent disablement and also provided that such proceedings should be disposed of as expeditiously as possible, it can easily be seen that the entire proceedings are meant to be peremptory and summary in nature. Under the said Rules, the Tribunal has to proceed as per the given time frame, not brooking absence of the opponents and to proceed to pass *ex parte* award of the compensation. Any technical defect would be allowed to be cured instead of dismissing the application on such technical ground. The Tribunal *suo motu* would obtain whatever information and documents necessary from the police and medical and other authorities. Sub-rule(9) of Rule 231 requires the Tribunal to proceed with such application on the basis of the First Information Report, the injury certificate or the postmortem report, as the case may be, registration of motor vehicle involved in the accident cover note, certificate of insurance policy relating to the insurance of the vehicle against the third party risk and finally the nature of treatment given by the Medical officer to treat the victim. These are the only materials which would form the basis for deciding the claim petition under section 140 of the Act. By the very nature of things, looking to the provisions, for no fault liability claim, a detailed inquiry

into the various defences of the insurance company are not envisaged at that stage. Various defences that the insurance company may raise repudiating its liability for any of the breaches of fundamental nature on part of the driver would be the subject matter of opposition and debate when the Claims Tribunal, given an opportunity would decide the claim under section 166 of the MV Act. At the stage where the Tribunal proceeds to decide the claim petition under section 140 on no fault liability, no such inquiry is envisaged under the statute. Adding any such stage would totally frustrate the purpose behind enactment of section 140. It would compel the insurance company to raise all their defences at that stage and the Tribunal to decide the same; leading to protracted proceedings. The purpose of making limited compensation available to claimants on no fault basis expeditiously would be frustrated.

29. We may recall that the no fault liability comes with a maximum limit of Rs.50,000/- in case of death. This is in contrast to the fault liability where after detail proof of negligence or wrongful act on part of the owner or driver of the vehicle, claimant or his heirs, could claim unlimited compensation depending on the proof of loss or damage caused on account of such accident. At that stage, the insurance company would have a full innings of raising all its statutory defences as may be available. The Tribunal would be duty bound to examine such disputes as may be raised giving its findings and conclusions based on the evidence. Section 144 of the MV Act which provides that the provision of Chapter X containing no fault liability

provision would apply notwithstanding anything contained in the MV Act or any other law in force is one more indication that the defences available to the insurance company under section 149(2) of the Act are shut out at the stage of section 140 proceedings.

30. This is precisely what the Full Bench of this Court in case of **Kadviben Udabhai Rathwa and Anr.**(supra), had held. We may recall that at the initial stage two learned Judges had expressed similar opinion, In case of **Mithakhan Dinakhan Notiyar and ors.**(supra) after detailed analysis of the statutory provisions and the procedure laid down under the said Rules of 1989, the learned Single Judge held and observed that :

“... It must be seen that Sec.140 of the Act speaks of peremptory awards in cases of permanent disablement or death. The object underlying this consideration is the immediate relief to the disabled victim of accident in case of permanent disability. Provision of Sec.140 is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor vehicles. The objects for which Sec.140 of the Act is enacted would be defeated if the Claims Tribunal is required to hold regular trial in the same manner as for adjudicating a claim made in a petition filed under Sec.168 of the Act. Having regard to the purpose underlying the enactment of the said provision, I am of the opinion that the defences raised by the insurer or other objections of the insurer or the owner should be examined later when the claims petition is decided on merits. The Claims Tribunal would be entitled to make award under Sec.140 of the Act as soon as it comes to the conclusion that the owner of the vehicle was involved and insured. The persons primarily responsible to pay compensation or damages for the

accident to the injured or the heirs or legal representatives of the deceased are normally driver and owner of the offending vehicle. The liability of the insurer is spelled out qua the person or classes of persons specified in the policy that is qua the insured under Sec.147(1) of the Act; and also qua the claimant of compensation under Sec.147(2) and 149(1) of the Act. If an award is given against insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of insurer is absolute and the insurer cannot question its liability on the ground that the amount is awarded on the principle of no fault liability. Moment either it is admitted by the owner of the vehicle that his vehicle is involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that the vehicle of the owner in question was involved in that accident, then the Tribunal without inquiring into correctness of other objections that may be raised by the Insurance Company would be entitled to make the award under Sec.140 and require the Insurance Company to pay specified amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the Insurance Company or by the owner of the offending vehicle at the time of deciding main claim petition.”

31. Later on in case of **Mahendrakumar Kalyanjibhai** (supra), the learned Single Judge followed the decision in case of **Mithakhan Dinakhan Notiyar and ors.**(supra). It was held that at the stage of deciding application under section 140, Claims Tribunal is required to satisfy itself in respect of only the following matters namely, (i) an accident has taken place out of use of the motor vehicle. (ii) the said accident has resulted in permanent disablement or death of a person whose representative have made the claim

petition (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident. It was further held that the defences raised by the insurer or the owner should be examined later when the claim petition is decided on its merits. It was therefore, concluded that :

“29. In the view that I have taken about the scope of inquiry under sec.140 of the Act, it is not necessary to go into the merits of the other defences urged by the learned counsel for the Insurance company.”

32. These decisions of the learned Judges came up for consideration yet again before the High Court. The learned Judge desired that the issues be referred to larger Bench. In **Kadviben Udabhai Rathwa and Anr.**(supra), therefore, the question considered by the Full Bench was “whether application under Section 140 can lie independently or has to be filed with application under Section 166'. In other words, whether in absence of application under Section 166, application under Section 140 is maintainable. If it is held that it is maintainable, Tribunal should allow the Insurance Company to raise all defences while dealing with application under Section 140 as if it is under Section 166. The Full Bench approved the decisions of the learned Single Judges in case of **Mithakhan Dinakhan Notiyar and ors.**(supra) and in case of **Mahendrakumar Kalyanjibhai** (supra) and concluded that:

“24 Having taken the bull by horns, conclusions irresistible may be summarized. Section 140 (Chapter X) provides for fixed sum of compensation in cases of no fault liability. It is independent of Section 161 (payment of compensation in cases of hit and run motor accidents), Section 163A

(payment of compensation on structured formula basis/fault liability – Chapter XI) and Section 166 (fault liability – Chapter XII). Application for compensation under Section 140 is maintainable without there being application for compensation under Section 163A or under Section 166 and disposable accordingly, and compensation awarded shall be final. But, where two applications are filed under Section 140 and 163A or under Section 140 and under Section 166, compensation awarded under Section 140 shall be reduced from the amount of compensation awarded under Section 163A or under Section 166 provided the compensation awarded under the latter provisions are higher, otherwise, compensation paid under Section 140 would be final. Further, where claim is preferred only under Section 140 and not any other provision, compensation awarded under Section 140 shall be final. Section 140 does not provide for interim/adhoc compensation because compensation paid under this Section is final. Interim/adhoc compensation' is used when apart from application under Section 140 there is also application under Section 163A or under Section 166, since the amount of compensation paid under Section 140 is made deductible. Where in addition to application for compensation under Section 140 there is application under other provisions on principle of fault liability, application under Section 140 shall be disposed of in the first place, since expeditious disposal of application under Section 140 is the basic theme of this beneficial piece of legislation. But, where claimant has filed application under Section 140, but not under any other provision claiming compensation on fault liability principle, application is maintainable and compensation awardable, but not recoverable from the claimant. The insurance company is not entitled to seek trial on merit of any legal defences available to it under Section 149(2) of the Act. Remedy of insurance company is against the owner of the vehicle invoking defences available to it, but not against the claimant. Law laid down by this Court in Munshiram

D.Anand Vs. Pravinsinh Prabhatsinh Anand Society, Navagamgedh, Jamnagar (Coram: S.D. FA/1683/2005 75/76 JUDGMENT Shah J.) (AIR 1997 GUJARAT 60), United India Insurance Co. Ltd. Vs. Maganlal Hirabhai Patel and others (S.D. Shah J.) (1999 ACJ 268), New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Notiyar (Coram: J.M. Panchal J.) (1995(2) GLR 1111), Mahendrakumar Kalyanjibhai Vs. Haresh Bipinchandra Pathak (Coram: M.S. Shah J.) (1998(2) GLR 1199) and Division Bench in New India Assurance Co. Ltd. vs. Babubhai Purshottambhai Harijan and others (F.A.No.133 of 2006 with C.A. 527 of 2006) (Coram: Bhawani Singh C.J. and Abhilasha Kumari J.) is correct, contentions to the contrary untenable. Reference is answered accordingly.”

33. The Full Bench decision of this Court holds the field. The question is, can it be stated that by virtue of decision of the Supreme Court in case of **Yallwwa and ors.**(supra), it is rendered no longer a good law. As noted earlier, in case of **Yallwwa and ors.**(supra), the Supreme Court was considering the question whether the order passed by the Tribunal under section 140 of the MV Act is appealable. While examining this question, the Supreme Court did observe that in a given case, the statutory liability of the insurance company either may be nil or a sum lower than the amount specified under section 140 of the Act. Thus when a separate application is filed in terms of section 140, in terms of section 168 of the Act, the insurer has to be given a notice in which event it goes without saying, it would be open for the insurance company to plead and prove that it is not a liability at all. These observations of the Supreme Court may give an impression that it was recognised that at the stage of the Claims Tribunal

deciding application under section 140 of the Act, the insurance company would be allowed to raise its defences which have to be answered by the Claims Tribunal. However, it is well settled that the ratio of a decision of a Court is one which ultimately decides an issue which comes up for consideration. Every observation would not form the ratio decidendi. The context of making observations by the Supreme Court in the said case were the legal question whether an order passed by the Claims Tribunal under section 140 of the Act is appealable or not. When on one hand, we have the above-noted observations made by the Supreme Court in a different context, we have two decisions of the Supreme Court on this very point, suggesting a different approach. In case of **Shivaji Dayanu Patil and another v. Smt. Vatschala Uttam More** reported in AIR 1991 Supreme Court 1769, the Supreme Court observed that the underlined object for enactment of section 92A is to make available to the claimants compensation, as expeditiously as possible and such award has to be made before adjudication of the claim under section 110A of the Act (i.e. repealed MV Act). The rules are framed by Maharashtra Government to enable expediting of claim petition under section 92A of the Act. It was observed that such object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as of adjudication of claim under section 110A of the Act. The Court held and observed as under :

“42. Rule 306C prescribes the procedure of disbursement of compensation under Section 92A to the legal heirs in case of death. The submission of Shri Sanghi is that in spite of the aforesaid amendments which have been

introduced in the Rules after the enactment of section 92A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation under section 92A of the Act. In other words, it must proceed to adjudicate the claim 52 after the opposite party is afforded an opportunity to file the written submission under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with rules 300 and 301 and that it is not permissible for the Claims Tribunal to make an order purely on the basis of the documents referred to in Rules 291A, 306A and 306B. In our opinion, the said submission of Shri Sanghi cannot be accepted. The object underlying the enactment of section 92A is to make available to the claimant compensation amount to the extent of Rs. 15,000 in case of death and Rs.7,500 in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim under section 110A of the Act. This would be apparent from the provisions of section 92B of the Act. Section 92B(2) of the Act provides that a claim for compensation under section 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 92A and also in pursuance of any right on the principle of fault, the claim for compensation under section 92A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in section 92B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims under section 92A in rules 291A, 291B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition under Section 92A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition under section 110 A of the Act. **Moreover, for awarding**

compensation under section 92A of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters:

(i) an accident has arisen out of the use of a motor vehicle;

(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;

(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident;

The documents referred to in Rules 291A and 306B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchnama and the First information Report will show whether the accident had arisen out of the use of the motor vehicle in question. The Injury Certificate or the postmortem report will show the nature of injuries and the cause of death. The Registration Certificate and Insurance Certificate of the motor vehicle will indicate who is the owner and insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness or genuineness of any of these documents or if it considers it necessary to obtain supplementary information or documents, Rules 306A empowers the Claims Tribunal to obtain such supplementary information or documents from the Police, medical or other authorities. This would show that Rules 291A, 306A and 306B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation under section 92A of the Act and in view of these special provisions which were introduced in the Rules by the amendments in 1984, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim under section 110A of the Act for the purpose of making an order on a claim petition

under section 92A of the Act.”

34. After the decision of Supreme Court in case of **Yallwwa and ors.**(supra), in case of **Eshwarappa alias Maheshwarappa and anr. v. C.S. Gurushanthappa and anr.** reported in AIR 2010 Supreme Court 2907, the Supreme Court considered a situation where the heirs of the occupant of the car who died in a motor vehicle accident preferred claim petitions before the Tribunal. Their claim petitions were dismissed. The prayer for compensation on no fault liability was also rejected. Before the Supreme Court, the claimants confined their challenge to non granting of compensation under section 140 of the Act. The Tribunal had rejected the application for compensation under section 166 of the Act on the ground that the driver Basavaraj had taken out the car of his employer unauthorisedly and against his expressed instruction and had caused the accident by driving rashly after consuming liquor. The Tribunal equated the situation to the driver having stolen the car though temporarily. On such basis the Tribunal had completely exonerated the owner as well as the insurance company. The Supreme Court while upholding such conclusions of the Tribunal proceeded to examine whether despite such facts the Tribunal could have rejected the application of the claimants for compensation under section 140 of the Act. In this context, the Supreme Court observed as under :

“13. Then there is section 141 which reads as under:

“141. Provisions as to other right to claim compensation for death or permanent disablement.

(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

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

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

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

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

Sub-section (1) of section 141 makes the compensation under section 140 independent of any claim of compensation based on the principle of fault under any other provision of the Motor Vehicles Act or under any other law but subject to any claim of compensation under section 163A of the Act. Sub-sections (2) and (3) further provide that even while claiming compensation under the principle of fault (under section 166) one may claim no fault compensation under section 140 and in that case the claim of no fault compensation shall be disposed of in the first place and the amount of compensation paid under section 140 would be later adjusted if the amount payable as compensation on the principle of fault is higher than it.

17. 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.”

35. From the above, it can be seen that in two direct decisions concerning the issue, the Supreme Court in case of **National Insurance Co. Ltd. v. Jethu Ram & Ors. Etc.etc** reported in 1998(2) GLH 916 and **Eshwarappa alias Maheshwarappa and anr.(supra)** held that the

proceedings under section 140 of the Act are summary in nature and a detailed inquiry permitting the insurance company to raise its statutory defences is not envisaged at that stage. Infact, **Eshwarappa alias Maheshwarappa and anr.**(supra) case arose where the Claims Tribunal had for valid reasons, rejected the claim petition under section 166 of the Act holding that due to the act of the driver, neither the owner nor the insurance company was liable. Despite which, the Supreme Court held that application under section 140 of the Act could not be dismissed since it involved no fault liability.

36. To reiterate, application under section 140 of the Act has to be decided by the Tribunal expeditiously and in a summary manner. At that stage, all that the Tribunal has to examine is whether such liability arises irrespective of the fact whether there was any negligence on part of the driver or owner of the motor vehicles. **The Tribunal while deciding the application has to verify only following three aspects namely, (i) the accident has arisen out of use of motor vehicle, (ii) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.**

37. No other inquiry is envisaged or permissible. The defences of the insurance company available under section 149(2) of the MV Act, would not be allowed to be raised. Correspondingly it would not be necessary for the Claims Tribunal to decide the same even if raised. At the same time, we are also of the opinion that the award under

section 140 of the Act is not in the nature of an interim order. It is ad-hoc and peremptory but not interim. As held by the Supreme Court in case of **Jethu Ram & Ors. Etc.etc**(supra), it cannot be stated that compensation awarded under section 140 is interim compensation. An application under section 140 of the Act, as is well known, can lie even without the aid of an application under section 166 of the Act. Under such circumstances, only on the three basic requirements noted above, any finding of the Claims Tribunal would act as a res judicata in the future proceedings. We cannot envisage one set of findings at the stage of section 140 of the MV Act and second set of findings at a later stage while finally disposing of the Claim Petition under section 166 of the MV Act. We however, hasten to add that other than three basic requirements noted above, no other issues would be gone into by the Claims Tribunal at the stage of deciding application under section 140 of the Act. The question of the insurance company failing to raise such defences and any such failure resulting into res judicata at a later stage, therefore, simply would not arise. In fact, in our opinion such defences are simply not available to the insurance company at the stage of Claims Tribunal deciding application of the claimant under section 140 of the Act under no fault liability clause.

38. In the context of questions referred, we summarise our answers as under :

i) At the stage of proceedings under section 140 of the MV Act, the Claims Tribunal has to verify only following

three aspects :

(a) the accident has arisen out of use of motor vehicle,

(b) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives.

(c) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

ii) If the insurance company has raised dispute with any of these aspects, the Claims Tribunal would give its findings through a summary inquiry.

iii) If the insurance company has not raised any dispute with respect to any of these aspects or if raised, is decided against the insurance company by the Claims Tribunal, the same would bind the insurance company at the later stage of deciding the Claim Petition under section 166 of the MV Act.

iv) No other defences including those referred to in section 149(2) of the MV Act would be available to the insurance company at the stage of application under section 140 of the MV Act. It would therefore, not be necessary, in fact, not permissible for the insurance company to raise such defences at this stage and if raised the Tribunal shall not decide the same at that stage. There would therefore, be no question of any res judicata with respect to such issues at the stage when the Claims

Tribunal proceeds to decide the Claim Petition under section 166 of the MV Act.

39. All the First Appeals would now be placed before the appropriate Court for further hearing on other issues.

(AKIL KURESHI, J.)

(VIPUL M. PANCHOLI, J.)

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