IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

1. **FAO No. 5311 of 2015 (O&M)**
Reserved on: 11.12.2024
Pronounced on: 27.01.2025

United India Insurance Co. Ltd. .....Appellant

Versus

Gurjinder Kaur and others ....Respondents

2. **FAO No. 5313 of 2015 (O&M)**

United India Insurance Co. Ltd. .....Appellant

Versus

Gurdeep Singh and others ....Respondents

3. **FAO No. 5314 of 2015 (O&M)**

United India Insurance Co. Ltd. .....Appellant

Versus

Master Jobanpreet Singh and others ....Respondents

4. **FAO No. 6079 of 2015 (O&M)**

Gurjinder Kaur .....Appellant

Versus

Narinder Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MS. JUSTICE KIRTI SINGH

Argued by: Mr. Suvir Dewan, Advocate
for the appellant-Insurance company
(in FAO Nos. 5311, 5313 and 5314 of 2015) and
for respondent No. 3-Insurance Company
(in FAO No. 6079-2015).

Mr. Sahil S. Chauhan, Advocate
for respondent No. 1
(in FAO Nos. 5311, 5313 and 5314 of 2015) and
for the appellant (in FAO No. 6079-2015).

****

SURESHWAR THAKUR, J.

1. The present reference generates from the making of the hereinafter extracted order by the learned Single Bench of this Court.

> *"There are conflicting views expressed by Single Benches of the Court with regard to compensation qua medical expenses payable to the victim under Section 163-A of the Act. In FAO No. 3874 of 2013, The Oriental Insurance Company Limited vs. Smt. Kulwinder Kaur and another decided on 26.7.2013, FAO No. 231 of 2008 United India Insurance Company Limited vs. Ved Parkash and another decided on 22.3.2017, FAO No. 4844 of 2014 Vijay Pal vs. Ved Parakash and another decided on 24.1.2018, it has been held that the injured is entitle to expenses incurred on medical treatment even if the amount exceeds Rs. 15,000/-.*
>
> *Another Bench in Bajaj Allianz General Insurance Company Limited vs. Sonu and others FAO No. 505 of 2013 decided on 27.4.2016 has taken a contrary view that limitation set down under Section 163-A of the Act cannot be crossed over on imaginative grounds which are opposed to statuary provisions and limited claim for medical expenses is to the tune*
> *of Rs. 15000/- as against Rs. 3,00,727/- awarded by the Tribunal on the basis of actual expenses incurred by the victim.*
>
> *In death cases, where the claim is made under Section 163-A of the Act, compensation is awarded strictly in consonance with the structured formula provided in the 2nd Schedule.*
>
> *The legislature did not respond to directions issued by Hon'ble the Supreme Court in* ***Puttamma and others vs. K.L.Narayana Reddy and another 2014(1)RCR (Civil) 443*** *Civil Appeal No.10918 of 2013 (Arising out of SLP (C)No. 4639 of 2010) decided on 9.12.2013 to immediately make proper amendments to the 2nd Schedule, in view of the present cost of living. However, Ministry of Road Transport and Highways issued notification dated 22.5.2018 whereby the 2nd Schedule has been amended allowing compensation of Rs. 5 lakh in case of death, Rs. 25000/- for minor injury and minimum compensation of Rs. 50,000/-, in case of permanent disability.*
>
> *Keeping in view the importance of the issue and divergent views of single Benches, this court feels it necessary that the matter be placed before Hon'ble the Chief justice for constituting a larger Bench."*

2. In pursuance thereto the Hon'ble Chief Justice, has referred the thereins

stated question of law for an answer thereto becoming rendered by the instantly constituted larger Bench.

3. Before proceeding to render an answer to all the FAOs (supra), a similar order has been passed and also a similar reference under the orders of Hon'ble the Chief Justice, thus has been made to the instantly constituted Larger Bench.

FACTUAL BACKDROP

4. The motor vehicle accident which resulted in the filing of the respective claim petitions by the claimants, before the learned Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal'), arose from a FIR common to each of them, inasmuch as, the apposite claim petitions arise from FIR No.59 of 29.01.2013, registered at Police Station Assandh. In the said FIR allegations were made that on on 27.1.2013, the injured claimant Gurjinder Kaur, along with her husband Gurdeep Singh and injured son Jobanpreet Singh, rather had started journey from village Bansa to Assandh, in Mahindra Bolero Jeep No. HR-05V-6000. The said vehicle was being driven by respondent-Narinder Singh. At about 7.00 P.M., when they reached near Sugar Mill Road, Phaphrana, then one tractor attached with two trolleys loaded with sugar canes rather was found parked in the middle of the road but without any indicators. Even otherwise, no bricks or stones were placed on the backside of the trolleys, thus to show the presence of the tractor attached with two trolleys. Consequently when their jeep reached near the said parked tractor, then in the meanwhile, another vehicle came from the opposite side, and, in the glaring lights of the said vehicle, the (supra) driver one Narinder Singh, thus could not sight the said parked tractor trolley, and, wherebys said jeep struck from front side against the second trolley. Owing to the said impact, all the occupants of the jeep received multiple and grievous injures. The claimants pleaded that the accident took place "on account of use" of the above said vehicle i.e. Mohindra Bolero Jeep No. HR-05V-6000, thus by its driver, and, besides arose from the negligent

act of the driver of the tractor trolley, who had parked the said tractor in the middle of the road.

5. Though since separate claim petitions became instituted before the Tribunal, but since all the separately instituted claim petitions, thus arose from a common FIR besides arose from a common accident, therebys all the claim petitions were consolidated and also a common award became rendered thereons.

6. It appears on a reading of the impugned award, that the said petitions were constituted under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), provisions whereof becomes extracted hereinafter.

> ***"[163A. Special provisions as to payment of compensation on structured formula basis.***—
>
> *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
>
> *Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.*
>
> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*
>
> *(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."*

7. Apparently on a reading of the provisions cast in Section 163-A of the Act of 1988, the natural inference to be mobilized therefroms, is that;

a) That the said provision when thus opens with a non obstante clause, wherebys the other provisions as become borne in any other apposite law,

as relating to the determination of compensation arising from any motor vehicle accident, thus involving the apposite offending vehicle, rather become ousted.

b) Moreover, therebys the liability to be fastened, on the owner of the offending vehicle, is to become so fastened only on the pleaded fact, qua the said offending vehicle, thus being in user, thus at the relevant time;

c) Moreover in terms of sub Section 2 of Section 163-A of the Act of 1988, thus the determination of fault or determination of tort of negligence, rather is not required, whereupons in a petition cast under Section 163-A of the Act of 1988, rather no determination(s) of fault nor any determination of compensation in terms of the ensuing principles as arise from apposite fault determinations being made, thus becomes enjoined to be so made. In other words, the multiplier method for computing compensation is not required to be recoursed when a petition under Section 163-A of the Act of 1988 become filed.

8. The reason for stating so emanates from the factum, that though Section 140 of the Act of 1988, becomes embodied in chapter 10 in the Act of 1988, which however has been omitted, through an amending Act of 2019, wherebys though the said chapter has been omitted. However, even if the said chapter has been omitted yet when at the time of generation of the lis, thus the said chapter was on the statute book, therebys for the purpose of making an inference, that with the occurrence thereofs, thus in the unamended Act of 1988, therebys the recoursing by the aggrieved vis-a-vis the mandate of Section 163-A of the unamended Act of 1988, was thus an estoppel qua the recoursing of the provisions embodied in chapter 10 of the Act of 1988. Imperatively since Chapter 10 in the Act of 1988 relates to the determination of compensation vis-a-vis the aggrieved, from the relevant accident, but without any determinations being

made vis-a-vis the negligent act of the driver of the offending vehicle concerned. In other words, the determinations of compensation, as therebys become made, are so made, but without determining the fault of the driver of the offending vehicle, thus when the provisions embodied either in Section 163-A of the Act of 1988 or the provisions which become embodied in Chapter 10 in the Act of 1988, (now omitted) become recoursed.

9. Though, the legislative purpose for the engraftment of the (supra) provisions wherebys fault is not required to be determined, but yet the quantification of compensation thereunders, thus becomes respectively pegged in a sum of Rs.50,000/- in case of death, whereas, in respect of permanent disablement becoming entailed upon the claimant, the quantum of compensation has been pegged in a sum of Rs.25,000/-.

10. Be that as it may, since sub Section 5 of Section 140 of the Act of 1988, thus opens with a non obstante clause, wherebys irrespective of determination of compensation amounts, being made in terms of sub Section 2 of Section 140 of the Act of 1988, provision whereof becomes extracted hereinafter, yet the owner of the vehicle, is yet also made liable to assign the lawfully determined compensation amount vis-a-vis claimants, thus as becomes so determined; a) under any other alike statute; b) as become determined in terms of the principles embodied in the other provisions in the Act of 1988. The said sub section embodies a further proviso, inasmuch as, the compensation amount as becomes determined, on a petition filed under any other provisions, thereupons the compensation determined in terms of sub Section 2 of Section 140 of the Act of 1988, rather requiring the apposite reductions, thus from the total total sums of compensation amount, which become determined through recourse being made to any other provisions, as existed/exists in the Act of 1988.

> ***"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 1[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.

3[(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 this section or under section 163A.]"

11. Even though the entire chapter 10 in the Act of 1988, thus envisaging the principle of no fault liability, and, besides making contemplations qua the quantum of compensation amounts becoming determined vis-a-vis the aggrieved, though stands repealed, through the amending Act of 2019. However, the unamended provisions thereof, require becoming reproduced, as at the time of the generation of the lis the said provisions were on the statute book, besides when for answering the instant reference, an allusion thereto, is but imperative.

12. Section 141 of the Act of 1988, though stands amended through the amending Act of 2019. However, the provisions cast therein, as, become extracted

hereinafter, but make statutory expressions, that the right to claim compensation on no fault basis, though does not estop the recoursings being made to the fault principles, through a petition in the said regard becoming filed before the Tribunal concerned. Therefore, though the provisions embodied in Chapter in the Act of 1988, become anvilled on the principle of no fault, but yet are supplementary to the provisions relating to determination of compensation, thus on the principle of fault.

> ***"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 1[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."*

13. Nonetheless, there are statutory contemplations in the (supra) statutory provisions, that if both the provisions of Section 140 of the Act of 1988, besides the principles relating to determination of fault, thus become recoursed. Moreover, if the

petitions respectively erected on the principle of no fault and a petition erected on the principle of fault liability rather become contemporaneously instituted before the Tribunal concerned. Resultantly in terms of sub Section 2 of Section 141 in the Act of 1988, all the petitions filed under no fault liability, thus is/are required to be expeditiously disposed of, besides the said petition(s) become(s) enjoined to be disposed prior to a decision becoming made on the petition erected on the principle of fault liability.

14. However, yet there exists in sub Section 3 of Section 141 of the Act of 1988, thus a non obstante clause, wherebys the compensation amount determined, on the no fault principle in terms of Section 140 of the Act of 1988, becomes liable to be adjusted against the amount, so determined in the petition, cast under the fault liability principle, but initially the amount of compensation, as, determined in the no fault petition, is required to be disbursed to the aggrieved. However, if the amount of compensation determined, on the principle of no fault, is lesser than the amount which becomes ultimately determined in the petition, thus erected on the principle of fault, therebys the amount of compensation, determined on the no fault principle, rather is required to be adjusted against the amount of compensation determined on the fault principle. On the other hand, if the compensation determined on the fault principle, is equal, to the compensation determined under no fault liability, therebys there is no requirement for the owner of the offending vehicle rather to disburse the said determined compensation on a petition erected on the principle of fault.

15. Obviously, if the claim petition filed on the principle of fault, becomes dismissed, therebys the earlier thereto determinations of compensation, as made but on a petition erected on the no fault liability, but would not require the said determined amount, thus being recovered from the aggrieved.

16. Though when any aggrieved, thus permissibly recourses the provisions of

Section 140 of the Act of 1988, and also the provisions built on the principle of fault liability, as the same are supplementary to each other, but since through an amending Act of 2019, in case a petition as cast under Section 140 of the Act of 1988, becomes so instituted, therebys there is impermissibility to the aggrieved to recourse the provisions engrafted in Section 163-A of the Act of 1988. Therefore, therebys it appears that the choice of remedies, has to be made with a profound wisdom inasmuch as, in the event of the aggrieved choosing the remedy under Section 163-A of the Act of 1988, and his subsequently instituting a petition under Section 166 of the Act of 1988, therebys the institution of a petition under Section 166 of the Act of 1988 becomes a grossly mis-constituted petition.

17. Section 163-A of the Act of 1988, is a special provision, as it is so detailed in the heading of the Section inasmuch as, it is stated in the heading of the said section that it is a special provision relating to the payment of compensation on structured formula basis. The said provisions opens with a non obstante clause and encumbers a liability upon the owner of the vehicle or the authorized insurer to become liable to pay, thus compensation to the aggrieved, in the case of death or permanent disablement, owing to an accident arising out of the "use of motor vehicle", but in the manner detailed in the second schedule to the victim or to legal heirs of the deceased/victim, as the case may be, schedule whereof becomes extracted hereinafter.

"[THE SECOND SCHEDULE
(See Section 163 A)
SCHEDULE FOR COMPENSATION FOR THIRD PART FATAL ACCIDENT/INJURY CASES CLAIMS
1. Fatal Accidents:

Annual Income	*Rs. 3000*	*Rs. 4200*	*Rs. 5400*	*Rs. 6600*	*Rs. 7800*	*Rs. 9000*	*Rs. 10200*	*Rs. 11400*	*Rs. 12000*	*Rs. 18000*	*Rs. 24000*	*Rs. 36000*	*Rs. 40000*
AGE OF VICTIM MULTIPLIER	*(RUPEES IN THOUSANDS)* *(compensation in case of death)*												
	Rs.	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*
Up to 15 yrs. 15	*60*	*84*	*108*	*132*	*156*	*180*	*204*	*228*	*240*	*360*	*480*	*720*	*800*
Above 15 yrs. but not exdg. 20 yrs. 16	*57*	*79.8*	*102*	*125.4*	*148.2*	*171*	*193.8*	*216.6*	*228*	*342*	*456*	*684*	*760*
Above 20 yrs. but not exdg. 25 yrs. 17	*54*	*75.6*	*97.2*	*118.8*	*140.4*	*162*	*183.6*	*205.2*	*216*	*324*	*432*	*648*	*720*
Above 25 yrs. but not exdg. 30 yrs. 18	*51*	*71.4*	*91.8*	*112.2*	*132.6*	*153*	*173.4*	*193.8*	*204*	*306*	*408*	*612*	*680*
Above 30 yrs. but not exdg. 35 yrs. 17	*50*	*67.2*	*86.4*	*105.6*	*124.8*	*144*	*163.2*	*192.4*	*192*	*288*	*384*	*576*	*640*
Above 35 yrs. but not exdg. 40 yrs. 16	*50*	*63*	*81*	*99*	*117*	*135*	*153*	*171*	*180*	*270*	*360*	*540*	*600*
Above 40 yrs. but not exdg. 45 yrs. 15	*50*	*58.8*	*75.6*	*92.4*	*109.2*	*126*	*142.8*	*159.6*	*168*	*252*	*336*	*504*	*560*
Above 45 yrs. but not exdg. 50 yrs. 13	*50*	*50.4*	*64.8*	*79.2*	*93.6*	*108*	*122.4*	*136.8*	*144*	*216*	*286*	*432*	*480*
Above 50 yrs. but not exdg. 55 yrs. 11	*50*	*50*	*54*	*66*	*78*	*90*	*102*	*114*	*120*	*180*	*240*	*360*	*400*
Above 55 yrs. but not exdg. 60 yrs. 8	*50*	*50*	*50*	*52.8*	*62.4*	*72*	*81.6*	*91.2*	*96*	*114*	*192*	*286*	*320*
Above 60 yrs. but not exdg. 65 yrs. 5	*50*	*50*	*50*	*50*	*50*	*54*	*61.2*	*68.4*	*72*	*108*	*144*	*216*	*240*

Above 65 yrs.	*.....5*	*50*	*50*	*50*	*50*	*50*	*50*	*51*	*57*	*60*	*90*	*120*	*180*	*200*

***NOTE**: The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1 /3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.*

2. Amount of compensation shall not be less than *Rs. 50,000.*
3. General Damages (in case of death):
The following General Damages shall be payable in addition to compensations outlined above:
(i) Funeral expenses *-- Rs. 2,000/-*
(ii) Loss of Consortium, if beneficiary is the spouse *-- Rs. 5,000/-*
(iii) Loss of Estate *-- Rs. 2,500/-*
(iv) Medical Expenses—Actual expenses incurred before death supported by bills/vouchers but not exceeding *-- Rs. 15, 000/-*
4. General Damages in case of Injuries and Disabilities:
(i) Pain and Sufferings
(a) Grievous injuries *-- Rs. 5,000/-*
(b) Non-grievous injuries *-- Rs. 1,000/-*
(ii) Medical Expenses—Actual expenses incurred supported by bills/vouchers but not exceeding as one time payment *-- Rs. 15,000/-*
5. Disability in non-fatal accidents:
The following compensation shall be payable in case of disability to the victim arising out of nonfatal accidents:
Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.
PLUS either of the following:—
(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or
(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.
Injuries deemed to result in Permanent Total Disablement /Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.
6. Notional income for compensation to those who had no income prior to accident:—
Fatal and disability in non-fatal accidents:—
(a) Non-earning persons *--Rs. 15,000 p.a.*
(b) Spouse *-Rs. l/3rd of income of the earning/surviving spouse.*
In case of other injuries only "general damage" as applicable.]

18. The statutory expression “arising out of the use of motor vehicle”, as become borne therein, but naturally are to be assigned a meaning, that “the mere user of the vehicle” but irrespective of attribution of fault or attribution of negligence to the driver of the offending vehicle, thus upon the said provision(s) become recoursed, thus but in terms of the structured formula envisaged and indicated in the second scheduled, rather compensation amounts are to be determined vis-a-vis the concerned.

19. The said employed meaning to the (supra) expression, is fortified, from the expressions occurring in sub Section 2 of Section 163-A of the Act of 1988, which makes categorical expressions, that the attribution of fault to the driver of the offending vehicle rather is neither required to be pleaded nor is required to be established.

20. It appears that in the legislation, in thus making Section 140 and Section 166 of the Act of 1988, to be supplementary to each other, despite the fact that the provisions engrafted in Section 140 of the Act of 1988 are founded, on the principle of

no fault, whereas, the petition under Section 166 of the Act, is founded on the principle of determination of fault, yet the legislature rather not making Section 163-A of the Act of 1988, principles whereof are also built on the principle of no fault, thus to be supplementary to Section 166 of the Act of 1988, appears to be founded upon the premise, that upon the aggrieved rather opting to recourse the remedy constituted under Section 163-A of the Act of 1988, therebys his/her forgoing the remedy both under Section 140, as also the remedy under Section 166 of the Act of 1988. It appears to be further founded upon the reason, that in sub Section 2 of Section 140 of the Act of 1988, the compensation amount to be determined in respect of death and/or on disablement, thus are respectively pegged in the amount/sums stated therein, whereas, on the aggrieved opting for the provisions embodied in Section 163-A of the Act of 1988, though thereins, there are also contemplations qua peggings of the compensation amount, as detailed in sub Section 1 of Section 163-A of the Act of 1988, but upon the structured formula envisaged therein, rather becoming recoursed, therebys may thus possibly result in determination of sums of compensation, but in sums higher than the said statutorily pegged compensation amounts, as becomes declared in Section 140 of the Act of 1988. Resultantly when therebys the said determined compensation amounts may be over and above than the one which are stated in sub Section 2 of Section 140 of the Act of 1988, therebys the said appears to be the foundation for the legislature through an amending Act of 1994, thus in sub Section 1 of Section 141 of the Act of 1988, incorporating the expressions "*any other right, except the right to claim under the scheme referred to in section 163A [such other right hereafter]*", wherebys there becomes statutorily foreclosed, the right to the aggrieved to, upon availing the mandate of Section 140 of the Act of 1988, to avail the remedy under Section 163-A of the Act of 1988.

21. Moreover, when in Section 163-A of the Act of 1988, there is also a

foreclosing provision wherebys on recoursings thereof being made, there is an estoppel against the aggrieved to yet institute a petition erected on the fault principle, besides the aggrieed becomes also barred to raise a petition erected under Chapter 10 in the Act of 1988, which is also based on no fault liability. Consequently, once the provisions of Section 163-A of the Act of 1988 becomes recoursed, therebys the aggrieved cannot be permitted to raise a petition erected on the fault principle. The above discussion is yet required to be made, even though the instant claim petition was yet raised under Section 163-A, carried in the Act of 1988.

22. On the other hand, on a petition filed under Section 163-A of the Act of 1988, the compensation to be determined thereunders, is to be on the basis of structured formula, which is envisaged in the second schedule appended to the Act of 1988, schedule whereof becomes extracted hereinafter. Even though, the said provision has been now omitted, but the omission of the said provision, through an amending Act of 2019 rather is inconsequential, as the generation of the lis is the material date, thus for determining whether the (supra) reference is to be answered in favour of the insurance company or is to be answered in favour of the claimants.

23. Before proceeding to further make an answer to the reference, it is necessary to bear in mind, that though a petition cast under Section 163-A of the Act of 1988, became instituted, but a reading of the award made on the said petition discloses, that the hereinafter formulated issues became formulated. Resultantly, for renditions of answers theretos, thus obviously the learned Tribunal concerned, assigned the evidence adducing discharging onus, on the following formulated issues, thus on the litigants concerned, besides also permitted the said discharging onus becoming so discharged through the apposite evidence becoming adduced on the relevant issues.

> *"1. Whether the accident in question took place on 27.1.2013 in the area of P.S.Assandh on account of rash and negligent driving of vehicle bearing no. HR-05V-6000 being driven in rash and negligent manner by respondent no.1 resulting*

into injuries to Gurdeep Singh, Jobanpreet Singh and Gurjinder Kaur ? OPP.

2. If issue no.1 is proved whether the claimants are entitled are any compensation, and if so how much and from whom? OPP

3. Whether the respondent no.1 was not holding valid and effective diving licence at the time of accident? OPR.

4. Whether the claimants have not come to the court with clean hands and has suppressed the true and material facts from this court? OPR.

5. Relief"

24. The formulation of issue No.1 (supra) relating to the befallment of the relevant collision, being a sequel of the offending vehicle bearing No.HR-05V-6000, being driven in a rash and negligent manner by respondent No.1, but naturally appears to be an issue which became formulated, despite its not being required for becoming formulated. The reason for so stating becomes aroused from the factum, that since this Court, has concluded that when a petition becomes filed under Section 163-A of the Act of 1988, therebys it is deemed to be filed without the necessity of any issue being formulated relating to the relevant collision being a sequel of rash and negligent manner of driver of the offending vehicle, nor any evidence adducing discharging onus, but was to be laid on the litigants concerned, nor any evidence was required to be permitted to be adduced thereons.

25. Now since the (supra) issue has been struck, besides when the evidence adducing discharging onus, as laid upon the claimants in the said petition, thus has been discharged through theirs being permitted to adduce the evidence on the said issues, whereafters answers in favour of the claimants became rendered on issue No.1.

26. Be that as it may, however, a reading of paragraph 21 and 22, as borne in the impugned award, paragraphs whereof become extracted hereinafter, reveals, that ultimately in terms of the employments of signification (supra), to the relevant statutory coinages, which occur in Section 163-A of the Act of 1988, the learned Tribunal concerned, thus concluded that the said issue was not required to be answered at all. Therefore, though the learned Tribunal concluded that though the relevant injury was a

sequel of "the user of the offending vehicle concerned", bearing registration No.HR-05V-6000, yet issue No.1 was answered in favour of the claimants and against respondent No.1.

> *"21. The present petitions have been filed under section 163-A of Motor Vehicles Act. For deciding these petitions, the claimants are not required to prove negligence on the part of the driver of the tractor trolley Only use of Mohindra Bolero Jeep has to be shown by the claimants. Narinder Singh respondent no.1 was driving Mohindra Bollero Jeep No. HR-05V-6000 and claimants Gurjinder Kaur, Jobanpreet Singh and Gurdeep Singh were also sitting in the jeep at the relevant time. Narinder Singh, respondent No.1, has admitted the factum of accident by way of filing his written statement. He has also admitted in his written statement that he and claimants were going to Bansa from Assandh in Mahindra Bolero Jeep No. HR-05V-6000 and the same was being driven by him with full care and caution on the left hand side of the road, observing all the traffic rules. At about 7.00 PM, when they were crossing Sugar mill road Phaphrana, then one tractor attached with two trolleys loaded with sugarcanes was parked in the middle of the road without any indicators. There was no reflector nor any indicator to depict the presence of tractor trolleys at all. Even there was no bricks or stones on the backside of trolley to show the presence of the tractor attached with the trolleys. When the Jeep in question reached near the parked tractor- trolleys, in the meanwhile, one another vehicle came from the opposite side. Due to glaring lights of that vehicle, driver of the Jeep could not see the tractor trolley. Hence the Jeep struck against the tractor and occupants of the jeep received multiple, serious and grievous injuries on various parts of their bodies and immediately, they were shifted to hospital. Relating to this accident, an FIR No.59 dated 29.1.2013 was registered in police station, Assandh, on the statement of Gurdeep Singh. Ex.A/41 is the copy of the FIR in this regard.*
>
> *22. From the above discussed unrebutted evidence on the file, it stands proved that claimants Gurpreet Kaur, Jobanpreet Singh and Gurdeep Singh received injuries in a motor vehicular accident on 27.1.2013 arising out of use of Mahindra Bolero Jeep bearing registration No.HR-05V-6000. As such, I hold this issue in favour of the claimants and respondent No.1 but against respondents No.2 & 3."*

27. Though the (supra) paragraphs borne in the impugned award rendered by the learned Tribunal concerned, do understate, that therebys the (supra) assignings of connotations, to the mandatory provisions which occur in Section 163-A of the Act of 1988, though do concur therewith. However, yet when the evidence discharging onus on

issue No.1, relating to whether relevant collision was a sequel of negligent manner of driving of the offending vehicle by its driver, became laid on the litigants concerned, in the claim petition, whereafters the said discharging onus was so discharged, through the learned Tribunal concerned, also permitting the claimant(s) concerned, to step into the witness box. Since the claimant(s) concerned, during of course of his examination-in-chief, thus tendered his affidavit to which Ex.PW1/A becomes assigned, and whereafter he was unsuccessfully cross-examined by the learned counsel for the insurer, therebys it appears that irrespective of the (supra) paragraphs occurring in the impugned award, thus the parties were contesting the claim petition, though labelled to be under Section 163-A of the Act of 1988, thus as a petition erected on the principle of fault.

28. Since findings in favour of claimant No.1 became recorded on issue No.1 yet when the said remained unchallenged, whereupons the said rendered findings on the (supra) issue when do acquire finality. Therefore, at this belated stage, the learned counsel for the insurance company cannot contend before this Court, that though the petition has been labelled to be a petition filed under Section 163-A of the Act of 1988, thus was to be stricto sensu construed to be so filed nor the learned counsel for the insurance company rather can at this belated stage argue a) that the non adoption of the contemplations made in the table appended to the unamended Act of 1988, b) especially appertaining to the determination of compensation amount(s), besides also especially in respect of medical expenses c) rather requires an interference, as the same infringes, the envisaged formula which was to be so applied, on a petition filed under Section 163-A of the Act of 1988. Reiteratedly, the said is a mis-founded argument.

29. Now assuming that since in respect of one of the claimants, though in the wake of the above inference, the determination of compensation in respect of permanent total disablement entailed upon claimant Gurjinder Kaur, thus was done, in the terms of envisagings made in the second schedule appended to the Act of 1988, but since a

challenge has been made by claimant Gurjinder Kaur, in respect of the determined sum of Rs.2,88,000/-, under the head of permanent total disablement, through an award becoming made by the learned Tribunal concerned. Therefore, in the wake of the principles relating to the determinations of compensation vis-a-vis a petition reared on the principle of fault liability, as was the instant petition, thus the said claim reared by one of the claimants, namely Gurjinder Kaur, thus was to be determined in the manner relating to determinations of compensation amounts upon claim petitions, as become reared on the principle of fault. In other words, the determination of compensation vis-a-vis claimant one Gurjinder Kaur was to be made through applying the multiplier method for determination of compensation, as the same is the formula to be adopted vis-a-vis a petition erected on the principle of fault determination(s).

30. The dispute also covers the aspect relating to the quantum of medical expenses, which become assessed in respect of each of the claimants, which are stated to be beyond the envisagings as made in the second schedule (supra), which now has been deleted. Since for reasons stated (supra), the learned Tribunal concerned, proceeded to, despite the petition becoming labelled under Section 163-A of the Act of 1988, to take it to be a petition erected on the principle of fault liability, therebys the said determination of compensation amounts, as has been made qua the incurred medical expenses, when becomes well founded upon adduced unrebutted cogent documentary evidence. Resultantly therebys the said determination of compensation under the head (supra), appears to be also a well determined compensation amount, thus on the premise, that the petition though labelled to be a petition, but was consensually treated by all concerned, to be a petition erected on the principle of fault and also become ultimately concluded to be a petition founded on the (supra) principle of fault.

31. Now assuming that even if the petition though labelled under Section 163-A of the Act of 1988 become mis-treated to be a petition erected on the principle of

fault, and though therebys the maximum awardable compensation to the claimants, thus under the head appertaining to the incurrings of medical expenses, for the treatment of the entailments of the injuries, as befell upon them, rather become claim to respectively fall in sums of Rs.38,295/-, Rs.10,479/- and Rs.45,479/-, whereas, the awardings of compensation in the (supra) head was to be made on the adoption of the structured formula. Be that as it may, since irrespective of the fact that the principle of no fault, is the foundation, for the engraftment of Section 163-A in the Act of 1988, wherebys neither the learned Tribunal concerned, nor the respondents were required to be permitting the claimants to adduce cogent unrebutted documentary evidence, thus displaying the actual incurring of expenses, thus for treating the injuries. Moreover, the provenly incurred medical expenses though become comprised in sums higher, than the amounts as detailed in the (supra) schedule, yet though the learned Tribunal concerned, was required to be awarding compensation amounts to the claimants in terms of the structured formula.

32. However, since reiteratedly both the insurance company, thus permitted the adduction of the said unrebutted documentary evidence, thus displaying that respectively sums of Rs.38,295/-, Rs.10,479/- and Rs.45,479/- did become actually incurred for treating the injuries which befell upon each of them. Moreover, when theretos credence became assigned, therebys at this stage the insurance company becomes reiteratedly estopped, to contend that the said proven medical bills relating to the incurrings of actual medical expenses, are not required to be believed. Moreover, the learned counsel for the insurance company, becomes also estopped to contest the creditworthiness of the said adduced unrebutted evidence. In case, the (supra) arguments is accepted, thereupon the purpose of Section 166 of the Act of 1988 but would become completely defeated, especially when the petition though labelled as a petition cast under Section 163-A of the Act of 1988, became treated to be a petition

filed under Section 166 of the Act of 1988.

33. The apposite envisaged structured formula when though requires application theretos being made upon the aggrieved recoursing the provisions embodied in Section 163-A of the Act of 1988. However, in the instant case for the (supra) reasons the (supra) structured formula becomes completely insignificant, as the insurance company through acquiescing to the tenderings of, thus cogent unrebutted evidence, thus detailing the atual incurrings of medical expenses by each of the claimants, but has also concomitantly acquiesced qua the said petition was in fact a petition erected on fault determination(s). Therefore, in the said situation, the insurance company cannot challenge the award, despite the same for reasons (supra), thus becoming well based, upon the unrebutted documentary evidence, suggestive the incurrings of actual medical expenses, by the claimants in theirs respectively securing alleviating treatment. In case the said inference is not drawn, thereupons the necessity of determination of just and fair compensation, thus underlying objective for making of the (supra) statute, but would become completely defeated, besides the effect of all the (supra) acquiescences would become completely underwhelmed.

34. The reference is answered accordingly. The matters be placed before the Roster Bench concerned.

(SURESHWAR THAKUR)
JUDGE

(KIRTI SINGH)
JUDGE

January 27, 2025
Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No