

IN THE HIGH COURT OF JUDICATURE AT PATNA

Jit Narayan Singh and Others

vs.

The Bihar State Transport Corporation and Anr.

Miscellaneous Appeal No.285 of 2016

06 February, 2023

(Hon'ble Mr. Justice Rajeev Ranjan Prasad)

Issue for Consideration

Whether petition under Section 166 of the M.V. Act is maintainable after having exhausted and obtained the relief prescribed under Section 140 of the Act?

Headnotes

Motor Vehicle Act, 1988 – section 166, 163A, 140 - Maintainability of Claim Petition After Availing Compensation on the Principle of No Fault Liability – appeal for setting aside impugned judgment whereby and whereunder the learned Tribunal has been pleased to dismiss the claim petition filed by the claimants-appellants under Section 166 of the M.V. Act, on the ground of its being not maintainable.

Held: as per settled law an application under Section 140 of the Act would have been allowed independently on the principle of no fault liability but once the claimants availed the compensation, they would be precluded from filing yet another application under Section 166 of the Act of 1988 - though section 163-A and 166 of the Act of 1988 are final and independent of each other as per statutory scheme, the claimant cannot pursue his remedies thereunder simultaneously - victim of an accident or his dependants have an option either to proceed under section 166 of the Act or under section 163A of the Act - once they approach the Tribunal under Section 166 of the Act, they have to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned - but, if they proceed under section 163A of the Act, the compensation will be awarded in terms of the

schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner or the vehicle or the driver of the vehicle - in the instant case the claimants availed their remedy under no fault basis under section 140 of the Act of 1988 - they had an option to avail their remedy either under section 140 or section 163A of the Act of 1988 - once they have chosen to go for a fixed amount as prescribed under section 140 of the Act, in view of section 163B of the Act of 1988 they are precluded from filing an application under Section 163B which is providing for compensation as per schedule II based on structured formula - the claimants could have opted for an application under Section 166 and prayed for an interim relief under Section 140 of the Act of 1988 - the legislatures never envisaged that the claimants would shift from one principle to another principle after having received compensation in terms of the option exercised by him/her – no error in impugned judgment – appeal dismissed (Para- 15, 21, 22, 26-28)

Case Law Cited

New India Assurance Co. Ltd. Vs. Fida Hussain and Another **2002 (50) BLJR 44**; Kesavan Nair vs. State Insurance Officer **1971 (ACJ) 219 (Kerala)**; Manjushri Raha v. B.L. Gupta **(1977) 2 SCC 174**; Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi **(1981) 4 SCC 660**; Smt. Yallwwa and Oth ers Vs. National Insurance Company Ltd. & Another **(2007) 6 SCC 657**; Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi @ Md. Moya and others **1994 ACJ 74 (Patna)**; Veena Devi & Ors. Vs. Ram Nandan Prasad & Ors. **2013 (2) PLJR 123** - Referred To.

Oriental Insurance Company Ltd. Vs. Dhanbai Kanji Gadhvi & Ors. **(2011) SCCR 409 : (2011) 11 SCC 513**- Relied Upon.

List of Acts

Motor Vehicle Act, 1988

List of Keywords

Motor Vehicle Claim Case; Compensation; 'No Fault Liability' Principle;

Maintainability of Claim Petition After Availing Compensation on the Principle of No Fault Liability; Victim of Accident; Negligence or Default on the Part of the Owner or the Vehicle or the Driver.

Case Arising From

Judgment dated 21.11.2015 and award dated 02.03.2016 passed by the learned Additional District Judge-V- cum-Motor Vehicle Accident Tribunal, Rohtas in M.V. Claim Case No.76/2009.

Appearances for Parties

For the Appellant/s: Mr. Din Bandhu Singh, Advocate ; Mr. Santosh Kumar, Advocate

For the Respondent No.1: Mr. P.K. Verma, Sr. Advocate; Mr. Arvind Kumar, Advocate

For Respondent No.2: Mr. Ashok Priyadarshi, Advocate

Headnotes Prepared by Reporter: Ghanshyam

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.285 of 2016

1. Jit Narayan Singh @ Satya Narayan Singh, son of late Shiv Pujan Singh
2. Manish Kumar
3. Piyush Kumar
4. Rahul Kumar (2-4 are minor son of Jit Narayan Singh @ Satya Narayan Singh, natural guardian and next friend).
All are R/o village-Bilari, P.O.-Silari, P.S.-Kargahar, District-Rohtas.

... .. Appellant/s

Versus

1. The Bihar State Transport Corporation At Patna owner of Bus Number BR 3P/0257.
2. The United India Insurance Company Ltd. through its Branch Manager, United India Insurance Company Ltd. G.T. Road, Sasaram, P.O.+P.S.-Sasaram, District-Rohtas, Insured Bus No.BR3P/0257.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Din Bandhu Singh, Advocate
Mr.Santosh Kumar, Advocate
For the Respondent No.1: Mr. P.K. Verma, Sr.Advocate
Mr. Arvind Kumar, Advocate
For Respondent No.2 : Mr. Ashok Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 06-02-2023

Heard Mr. Dinbandhu Singh, learned Advocate assisted by Mr. Santosh Kumar, learned Advocate for the appellants and Mr. Ashok Priyadarshi, learned counsel for the United India Insurance Company Ltd. (respondent no.2) and Mr. Arvind Kumar, learned Advocate for the Bihar State Transport Corporation (respondent no.1).

2. The present appeal has been preferred for setting aside the judgment dated 21.11.2015 and award dated 02.03.2016 passed by the learned Additional District Judge-V-



cum-Motor Vehicle Accident Tribunal, Rohtas (hereinafter referred to as 'the Tribunal') in M.V. Claim Case No.76/2009, C.I.S. No.193 (C.I.S. No. 193/2013) whereby and whereunder the learned Tribunal has been pleased to dismiss the claim petition filed by the claimants-appellants under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act of 1988') on the ground of its being not maintainable.

Brief Facts of the Case

3. The claimants in this case are husband and three minor sons of one Kanchan Devi. The case of the claimants is that in a road traffic accident which took place on 27.06.2005 on National Highway No.30 in front of Panditpura, P.S. Dinara (Bhanash), District-Rohtas a bus bearing Reg.No.BR-3P/0257 owned by Opposite Party no.1-Respondent no.1 and insured by Opposite Party no.2-Respondent no.2 crushed Kanchan Devi to death. It is alleged that the bus was driven rashly and negligently as a result whereof the accident took place and 25 years old lady who happened to be the wife of claimant of no.1 and mother of claimant nos.2 to 4 died on spot. A first Information Report being Dinara P.S. Case No.80/2005 dated 27.06.2005 under Sections 279 and 304(A) of the Indian Penal Code was lodged against the driver of the offending bus. The claimants



claimed Rs.3,00,000/- for lost of dependency.

4. The opposite party no.2 contested the case on various grounds including one of maintainability of the application under Section 166 of the Act of 1988. The opposite party no.1 did not appear to contest the claim and as such the proceeding was drawn ex-parte against the opposite party no.1.

5. The learned Tribunal framed as many as four issues which are being reproduced hereunder for a ready reference:-

(I) Whether the claim petition as framed is maintainable?

(II) Whether the deceased Kanchan Devi aged about 25 years died on 27.10.2005 on account of rash and negligent driving of Motor vehicles bearing Regd. no. BR-3P/0257?

(III) Whether the claimants are entitled to the compensation as claimed for ?

(IV) Whether the claimants are entitled to any other relief?

6. Some documentary evidences were also filed on behalf of the claimants such as the certified copy of F.I.R. (Ext.1), certified copy of chargesheet (Ext.2), photocopy of postmortem report (Ext.3), driving license (Ext.4), photocopy of registration book (Ext.5) and photocopy of insurance paper (Ext.6).

7. While considering the issue nos.I and III, the learned Tribunal found that the claimants themselves have stated in paragraph '13' of the claim petition that they had earlier filed a



claim case no.77/2005 under Section 140 of the Act of 1988. They had admittedly received a sum of Rs.50,000/- under the order of Additional District Judge-1st-cum-MACT, Rohtas. The insurance company (opposite party no.2) had already paid the amount. The opposite party no.2 was contesting the issue of maintainability on the ground that the claimants having already received the compensation under 'no fault liability' principle in M.V. Case No.77/2005, cannot be allowed to maintain a subsequent application after four years under Section 166 of the Act of 1988. The records would show that the present application was filed in the year 2009 after about four years from the earlier application under Section 140 of the Act of 1988.

8. The opposite party no.2 relied upon a judgment of this Court in the case of **Veena Devi & Ors. Vs. Ram Nandan Prasad & Ors.** reported in **2013 (2) PLJR 123** to submit that based on a catena of decisions of Hon'ble Supreme Court, this Court has also held that a separate and subsequent application on the principle of "no fault liability" cannot be maintained after having chosen to avail benefit of compensation on the principle of "no fault liability" or the structured liability as envisaged under Section 163A of the Act of 1988. The learned Tribunal has held that the claimants are not entitled to maintain an applica-



tion under Section 166 of the Act of 1988.

9. Being aggrieved by and dissatisfied with the views expressed by the learned Tribunal in the impugned judgment, the claimants have assailed the same.

Submissions on behalf of the claimants-appellants

10. Learned counsel for the appellants submits that no doubt in this case an application under Section 140 of the Act of 1988 was earlier filed on behalf of the claimants and the claimants received Rs.50,000/- on the principle of no fault liability but the Act of 1988 being a peace of welfare legislation would not preclude the claimants from filing the application under Section 166 of the Act of 1988. It is his submission that once the application under Section 166 of the Act of 1988 was filed, this was liable to be considered and adequate amount of compensation should have been awarded and payment thereof should have been made after deducting amount already paid to the claimants-appellants.

11. Learned counsel further submits that as a matter of fact the application under Section 166 of the Act of 1988 filed on behalf of the claimants of another deceased Dukhna Devi giving rise to M.V. Case No.141 of 2009 was allowed vide judgment dated 15.05.2019. By filing a supplementary affidavit the



judgment passed by the learned Tribunal in M.V. Case No.141 of 2009 (Dharmendra Singh & Ors. Vs. Bihar State Transport Corporation & Anr.) has been brought on record as Annexure-‘1’ to the supplementary affidavit. Learned counsel submits that the learned Tribunal has, in the case of Dharmendra Singh (Supra) relied upon the Hon’ble Division Bench judgment of this Court in the case of **New India Assurance Co. Ltd. Vs. Fida Hussain and Another** reported in **2002 (50) BLJR 44**. It is submitted that the Tribunal’s view expressed in its judgment dated 15.05.2019 in M.V. Case No.141 of 2009 is the correct view, therefore, this Court may set aside the impugned judgment and allow this appeal.

Submissions on behalf of the United India Insurance Company (Respondent no.2)

12. Mr. Ashok Priyadarshi, learned counsel for the respondent no.2 has opposed this appeal. Submission is that the impugned judgment is based on correct appreciation of law on the subject, hence no interference is required with the same. Learned counsel has relied upon a judgment of the Hon’ble Supreme Court in the case of **Oriental Insurance Company Ltd. Vs. Dhanbai Kanji Gadhvi & Ors.** reported in **(2011) SCCR 409= (2011) 11 SCC 513** to submit that in the said case



the Hon'ble Supreme Court categorically held that in cases of motor vehicle accident insurance claims the claimants have remedy for getting compensation both under Section 163A and 166 of the Act of 1988. Both the remedies have been held to be final and independent to each other under the statutory scheme of the Act of 1988. The Hon'ble Apex Court has, however held that the claimants cannot pursue their remedies under the both provisions simultaneously and once the claimants have obtained compensation finally determined under Section 163A, they would be precluded from proceeding further with petition filed under Section 166. The Hon'ble Supreme Court followed the earlier judgment rendered in the case of **Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd., Baroda** reported in **(2004) 5 SCC 385**.

13. Learned counsel has further submitted that in the case of **Fida Hussain** (supra) the question which came for consideration before the Hon'ble Division Bench was as to whether the claimants can maintain an application under Section 140 for 'no fault' compensation without filing a petition under Section 166 of the Act of 1988. The Hon'ble Division Bench having traced the history behind incorporation of no fault liability in the scheme of the Act of 1988 held that Act does not create any bar,



express or implied, to the filing of any application under Section 140 directly without filing claim under Section 166 of the Act. The Division Bench was of the view that the remedy under Section 140 is in addition to any other right. The court also held that no fault compensation under Section 140 can be claimed also in a pending claim under Section 166 and where such application is made, it is required to be disposed of at the first place subject to the final adjudication as laid down in sub-section (3) of Section 141. Such payments would be in the nature of an interim payment. Learned counsel submits that in the case of Veena Devi (supra), a learned coordinate Bench of this Court was called upon to consider almost a similar circumstance. In the said case, reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of **Smt. Yallwwa and Others Vs. National Insurance Company Ltd. & Another** reported in (2007) 6 SCC 657, **Eshwarappa @ Maheshwarappa and another vs. C.S. Gurushanthappa and another** reported in (2010) 8 SCC 620, **Oriental Insurance Co. Ltd. Vs. Dhanbai Kanji Gadhvi and Others** reported in (2011) 11 SCC 513 and **Surender Kumar Arora and another vs. Dr. Manoj Bisla and others** reported in (2012) 4 SCC 552. Further reliance was also placed on the Division Bench judgment of this Court in the



case of **Oriental Insurance Co. Ltd. Vs. Mohiuddin Kureshi @ Md. Moya and others** reported in **1994 ACJ 74 (Patna)**.

The Division Bench judgment of this Court in the case of **Fida Hussain** (supra) was also brought to the notice of the learned coordinate Bench, however, the learned coordinate Bench found that the said judgment was rendered without noticing the earlier decision in the case of **Mohiuddin Kureshi @ Md. Moya** (supra). Learned counsel, therefore, submits that the learned coordinate Bench of this Court has rightly followed the judgments of the Hon'ble Apex Court while setting aside the order of the claim Tribunal and remitting the matter to the Tribunal to proceed expeditiously in the light of the observations. Opportunity was granted in the case of **Veena Devi** to the claimant to either proceed with the application under Section 140 of the Act independently or may convert it into a composite application extending the claim to a larger extent of their choice/suitability with a relief under Section 140 of the Act.

Consideration

14. Having heard learned counsel for the appellants as also learned counsel for the opposite party no. 2 and upon perusal of the records, this Court finds that the present case is raising a question of law as to maintainability of petition under Sec-



tion 166 of the Act of 1988 after having exhausted and obtained the relief prescribed under Section 140 of the Act.

15. In the present case, the claimants availed compensation on the principle of no fault liability by filing an independent application under Section 140 of the Act of 1988. This Court would have no difficulty in understanding that as per settled law an application under Section 140 of the Act would have been allowed independently on the principle of no fault liability but this Court would take a view that once the claimants availed the compensation, they would be precluded from filing yet another application under Section 166 of the Act of 1988. The principles on which the no fault liability has come into being in the statute book have been duly discussed in the Hon'ble Division Bench judgment of this Court in the case of **Fida Hussain** (supra). In the Motor Vehicles Act, 1939 which was amended by Act No. 47 of 1982, the provisions relating to no fault compensation were incorporated but this happened only after the Hon'ble Kerala High Court for the first time in the case of **Kesavan Nair vs. State Insurance Officer** reported in **1971 (ACJ) 219 (Kerala)** observed in the following words:

“Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer, in-



stead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the legislature and not for the court. But this is a lacuna in the law which I think it would be just to rectify.”

16. This was also noticed by the Hon’ble Supreme Court in the case of **Manjushri Raha v. B.L. Gupta** reported in (1977) 2 SCC 174 wherein the Hon’ble Supreme Court observed as under:

“With the emergence of an ultramodern age which has led to strides of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though sometimes in the case of some it has also proved to be a misfortune.... The time is ripe for serious consideration of creating no fault liability, having regard to the directive principles of the State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalisation of general insurance companies and the expanding trend towards nationalisation of bus transport, the law of Torts based on no fault needs reform.”

17. Again in the case of **Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi** (1981) 4 SCC 660, wherein the Supreme Court observed thus:

“We cannot part with this case without impressing upon the Government, once again, the urgent need to provide by law for the payment of reasonable amounts of compensation, without contest, to victims of road accidents. We find that road accidents involving passengers travelling by rail or public



buses are usually followed by an official announcement of payment of ex gratia sums to victims, varying between five hundred and two thousand rupees or so. That is a niggardly recognition of the State's obligation to its people, particularly so when frequency of accidents involving public transport system has increased beyond believable limits....It was four years ago that this court sounded a warning and a reminder in [Manjushri Raha v. B.L. Gupta](#) 1977 ACJ 134 (SC).”

18. In the aforementioned background the Parliament thought it appropriate to bring a legislation which came into being by way of an amendment in 1982. By amending Act No. 47 of 1982 provisions were made in Motor Vehicles Act, a new Chapter containing Section 92-A and allied sections were added. Section 140 of the Act of 1988 corresponded to Section 92-A of the 1939 Act.

19. At this stage, this Court would reproduce Sections 140, 141, 144, 163-A, 163-B, 165 and 166 of the Act of 1988 hereunder:

“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 ²[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.

¹[(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.

1. Subs. by Act 54 of 1994, sec. 43, for "twenty-five thousand rupees" (w.e.f. 14-11-1994).

2. Subs. by Act 54 of 1994, sec. 43, for "twelve thousand rupees" (w.e.f. 14-11-1994).



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;

1. Subs. by Act 54 of 1994, sec. 44, for “any other right(herafter” (w.e.f. 14-11-1994).



(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.

144. Overriding effect.—The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

¹**[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 (8 of 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.

163B. Option to file claim in certain cases.— Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not under both.]

1. Subs. by Act 54 of 1994, sec. 51 (w.e.f. 14-11-1994).



165. Claims Tribunals.—(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 ¹[and section 163A].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he— (a) is, or has been, a Judge of a High Court, or (b) is, or has been, a District Judge, or (c) is qualified for appointment as a High Court Judge ¹[or as a District Judge].

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made —

1. Added by Act 54 of 1994, sec. 52 (w.e.f. 14-11-1994).



- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

¹[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

²[* * * *]

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

1.Subs. by Act 54 of 1994, sec. 53, for sub-section(2) (w.e.f. 14-11-1994).
2. Sub-section (3) omitted by Act 53 of 1994, sec. 53 (w.e.f. 14-11-1994)
3. Subs. by Act 54 of 1994, sec. 53, for sub-section (4) (w.e.f. 14-11-1994).



20. In the case of **Fida Hussain** (supra) the question which fell for consideration before the Hon'ble Division Bench was as to whether without filing a petition under Section 166 of the Act of 1988 application for 'no fault' compensation under Section 140 of the Act is maintainable. It is in that context the Hon'ble Division Bench considered the whole issue. Here the facts situation are completely different. In this case having obtained compensation under section 140, after four years the claimants are looking to maintain an application under Section 166 of the Act of 1988.

21. In the opinion of this Court the case of **Dhanbai Kanji Gadhvi** (supra) would be the guiding judgment in the facts of the present case. In the said case the Hon'ble Supreme Court though held that section 163-A and 166 of the Act of 1988 are final and independent of each other as per statutory scheme, the claimant cannot pursue his remedies thereunder simultaneously. Paragraph 12, 13 and 14 of the judgment in the case of **Dhanbai Kanji Gadhvi** (supra) are being reproduced hereunder:

“12. On consideration of the object of section 163A of the Act which was inserted by Section 51 of the Act 54 of 1994 w.e.f. 14-11-1994, and the non-obstante clause with which sub-section (1) of Sec. 163A commences, it is manifest that the legislature did not intend to prevent the claimant from getting



compensation as per the structured formula merely because in his original claim petition he had prayed for compensation on the basis of "fault liability" principle. There is no prohibition in any provision of the Motor Vehicles Act 1988 against the claimant praying for compensation as per the structured formula after having filed a claim petition under section 166 of the Act. Therefore, this Court finds that the respondents were perfectly justified in making an application at Exhibit 6 in MACP No.759 of 1997 which was filed under Section 166 of the Act and praying the Tribunal to award compensation to them on the basis of the structured formula mentioned in Section 163A of the Act. This Court further finds that the Tribunal did not commit any error in entertaining the said application and awarding a sum of Rs.2,65,500/- as compensation to the respondents under Section 136A of the Act.

13. However, in *Deepal Girishbhai Soni & Ors. Vs. United India Insurance Co. Ltd., Baroda* (2004) 5 SCC 385, the question which was considered by a three Judge Bench of this Court was whether a proceeding under Section 163A of the Motor Vehicles Act, 1988 is a final proceeding, by reason whereof, the claimant who has been granted compensation under Section 163A, is debarred from proceeding with any further claims on the basis of fault liability in terms of Section 166. After considering the scheme envisaged by Section 163A of the Act, it is held in the said case that Parliament intended to lay down a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation. What is ruled therein is that the compensation determined and paid under Section 163A of the Act is final and not an interim one. The clear proposition of law which emerges from the decision of this Court in *Deepal G. Soni* (supra) is that the remedy for pay-



ment of compensation both under Sections 163A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. As explained by this Court in the said decision, a claimant, thus, must opt/elect to go either for a proceeding under Section 163A or under Section 166 of the Act, but not under both.

14. Applying the principle laid down in Deepal Soni (supra) to the facts of the case, it will have to be held that the respondents having obtained compensation, finally determined under Section 163A of the Act are precluded from proceeding further with the petition filed under Section 166 of the Act. The exception mentioned by the learned Single Judge in the impugned judgment that a petition under Section 166 of the Act can be proceeded further if it is filed before passing of an award passed under Section 163A of the Act is not supported by the scheme envisaged under Sections 163A and 166 of the Act and is contrary to the principle of law laid down by this Court in Deepal Soni's case. Therefore, this Court is of the opinion that the impugned judgment of the High Court upholding the order passed by the Tribunal to permit the respondents to proceed further with the petition filed under Section 166 of the Act cannot be sustained and will have to be set aside.”

22. Learned coordinate Bench of this court while considering the case of **Veena Devi and Others** (supra) relied upon the judgment of the Hon'ble Supreme Court in the case of **Smt. Yallwwa and Others** (supra) to notice the distinctions and differences in the applications which are to be filed on the principle of no fault liability and on the principle of fault liability as



envisaged under sub-clause (3) of Section 140 and sub-section (2) of Section 163A of the Act of 1988. It has been noticed that sub-clause (1) of Section 140 and Section 163A of the Act differentiates amongst the persons liable to compensate the claimants. In Section 140 of the Act only owner or owners of the vehicle is made liable whereas in section 163A of the Act, the insurer to the vehicle has also been made equally liable in lieu of the owner in appropriate case.

23. This distinction has been noticed in the case of **Smt. Yallwwa and Others(supra)**. Paragraph 9 and 10 from the said judgment are being reproduced hereunder for a ready reference:

“9. It is not in dispute that an award of the Tribunal is to be made in terms of Section 168 of the Act. For the said purpose, the Tribunal is required to issue a notice to the insurer and give the parties an opportunity of being heard. While making an award in terms of Section 168 of the Act, the procedure laid down under Section 166 of the Act are required to be complied with. The provision appended to Section 168 of the Act, however, lays down that where such application makes a claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X of the Act. Section 140, as noticed



hereinbefore, provides for no fault liability. It uses the words “accident arising out of the use of a motor vehicle”, the owner of the vehicle and when more than two vehicles are involved, “the owners of the vehicles” shall, jointly and severally, be liable to pay compensation.

10. The said provision, therefore, makes the owners of the vehicles liable but not the insurer per se. irrespective of the fact whether a claim petition is required to be adjudicated under Chapter X or Chapter XII of the Act. It is permissible to raise a defence in terms of sub-section (2) of Section 149 of the Act. Even it is possible for the owner of the vehicle being not involved in the accident, he is not liable to pay any amount in terms of Section 140 of the Act.

24. The Court held that in a given case, the statutory liability of an insurance company may either be ‘nil’ or a sum lower than the amount specified under Section ‘140’ of the Act, therefore, on a separate application filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it would be open for the insurance company to plead and prove that it is not liable at all.

25. In the case of **Oriental Insurance Co. Ltd. vs. Mohiuddin Kureshi alias Md. Moya and others (supra)** the Hon’ble Supreme Court held in paragraph ‘11’ as under:

“11. From a conjoint reading of the aforementioned provisions, there cannot be any doubt that an application u/s 140 of the said Act can be filed separately. However, Section 166 of the said Act



contemplates filing of a composite application, as is evident from the proviso appended to sub-section (2) of Section 166 of the said Act.”

26. In the case of **Surender Kumar Arora** (supra) the judgment of the Hon’ble Supreme Court in the case of **Oriental Insurance Company Limited Vs. Meena Variyal and others [(2007) 5 SCC 428]** was followed and it was held that the victim of an accident or his dependants have an option either to proceed under section 166 of the Act or under section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But, if they proceed under section 163A of the Act, the compensation will be awarded in terms of the schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner or the vehicle or the driver of the vehicle.

27. Learned coordinate Bench has concluded in paragraph ‘12’ of the judgment in the case of **Veena Devi** (supra) in the following words:-

“12. And it is equally true that law makers have provided the claimants to come forward for their claims under no fault basis either under Section 140 or Section 163(A) of the Act, but, at the same time, such claimants are precluded from



coming forward with two independent applications under both the sections. As is crystal clear from the provision as contemplated under Section 163(B) aforestated which clearly means that on principle of no fault the claimants may have only two options either to claim for a fixed amount as prescribed under Section 140 of the Act or as per Schedule – II based on structured formula but if the claimants comes forward under Section 140 of the Act independently they can have no claim under Section 163(A) of the Act.”

28. This Court finds that in the instant case the claimants availed their remedy under no fault basis under section 140 of the Act of 1988. They had an option to avail their remedy either under section 140 or section 163A of the Act of 1988. Once they have chosen to go for a fixed amount as prescribed under section 140 of the Act, in view of section 163B of the Act of 1988 they are precluded from filing an application under Section 163B which is providing for compensation as per schedule II based on structured formula. The claimants could have opted for an application under Section 166 and prayed for an interim relief under Section 140 of the Act of 1988.

29. In the given circumstance, this Court would have no difficulty in arriving at a conclusion that in terms of the judgment referred hereinabove if a claimant who has availed his remedy under Section 163A is debarred from proceeding with



any further claims on the basis of fault liability in terms of Section 166, similar would be the situation of the claimants in the present case who have chosen to avail their remedy under Section 140 of the Act of 1988, for the legislatures never envisaged that the claimants would shift from one principle to another principle after having received compensation in terms of the option exercised by him/her. The question of law as framed is, thus, answered accordingly. This Court finds no error in the impugned judgment.

30. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/Rajeev-

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