Before Rajbir Sehrawat, J.

TATA AIG GENERAL INSURANCE COMPANY LIMITED—*Appellant*

versus

SURJEET KAUR AND OTHERS—*Respondents*

FAO No. 2558 of 2016

March 07, 2022

Motor Vehicles Act, 1988— Ss.134A, 146, 147, 151, 161, 164, 165, 166, 170, 178— Road Traffic Acts 1930 and 1988 (British)— Tortuous Liability— Statutory liability – Kinds of compensation under 1988 Act — (1) Fixed amount compensation in 'Hit-and-Run cases' — 'vehicle neutral'— Granted when offending vehicle has run away without leaving behind identity—(2) Section 164 — Compensation against owner and insurer if identity of vehicle is known, but despite there being no proof of fault of their vehicle— 'fault neutral'—Statutory implementation of rule of strict liability— Predetermined amounts—(3) Residual cases are 'fault liability' — Claimants opted not to get fixed amounts of compensation — Establish fault of offending vehicle—Liability to pay compensation — Tagged to 'use of vehicle' in public place— Section 146 — Compulsory Insurance— Implies statutory compulsory payments of compensation by insurer—General Rule— Minus any proof of negligence from either side — Liability of 50% of each of Insurance companies— In the present case, claimants lead sufficient evidence—Negligence and default of offending tanker, no evidence of negligence or lack of 'due care' of driver of Innova car, but his vehicle also defaulted to some extent—Therefore, its insurer has also to share some responsibility Insurance company of offending tanker— Liable 70%, whereas Insurance company of Innova car — Liable 30% — Appeals of Insurance Company of Innova car partly allowed.

Held that, **Rule of Liability and extent of liability of Insurance Company**:

There is plethora of earlier judgments; including the ones from the Supreme Court that the liability to pay the compensation for a motor vehicle accident is a tortuous liability and the basis to invite such liability is the negligence of the driver. If the drivers happens to be

other than the owner then the liability of the owner; and thus of the insurer, is vicarious in nature. The rule of liability as based on the negligence and the vicariousness of the liability are common law concept as was devised in British practice on account of their Road Traffic Acts of 1930 and of 1988 being totally silent on that aspect. However the legal position in India; as prevalent under Motor Vehicle Act 1988 and as amended upto the year 2019; has undergone a sea change. The provisions of the Act have made a paradigm shift in the Rule and nature of liability. Under the provisions of the Act the liability has increasingly metamorphosed from a tortuous liability to a statutory liability and from being negligence based liability to a vehicle default based strict liability. The concept of the liability being based on 'negligence' of the driver and the same being vicarious both have been whittled down by the Motor Vehicle Act to the extent of being rendered almost irrelevant for the purposes of adjudication upon compensation under the Act. Statutory provisions have retained a very limited scope for theses concept. In fact the, the synoptic view of the provisions of the Act makes it clear that the legislature in India has intentionally avoided adopting the 'negligence' per se; as a determinant to fix the locus of liability. The legislature has not even used the word 'negligence' in the chapters XI and XII of the Act which make provisions relating to the compensation. The court is not to assume that the Indian Parliament did not know the word 'negligence' or its meaning and scope. On the contrary the legislature has used the word 'negligence' or its derivatives like 'negligent' or 'negligently' in the same Act but in different a chapter and for the purposes other than defining the rule of liability. These words have been used in section 134A relating to the Protection to the Good Samaritans coming forward to help the injured in accidents; and in section 178 relating to punishment for travelling without tickets. Therefore, it is clear that the word 'negligence' or its derivatives have deliberately not been used in the provisions defining the rule of liability, qua the claimant and third party. However, as intended to serve as the determining basis for locus of liability; the legislature has intended and used the word 'neglect' and certain other word, which are not necessarily related to the driver, and which can be totally independent of and neutral to any negligence of the driver as such. The determinants have deliberately been made much wider as compared to the restricted rule of 'negligence' of driver. Hence it would not be appropriate to tie down the liability to 'negligence' only; though it may still be a relevant factor in some situations of the accidents and for some purposes. (Para 9)

Further held, that the Motor Vehicle Act contemplates different kinds of compensation to the victim or the legal representatives of a deceased victim of accident. Section 161 of the Act provides for fixed amount compensation in accidents of 'Hit-and-Run cases'. This compensation is 'vehicle neutral' and is granted when the offending vehicle has succeeded in running away without leaving behind its identity. Section 164 provides for the compensation against the owner and insurer if the identity of their vehicle is known; but despite there being no proof of fault on the part of their vehicle. Therefore, this compensation is 'fault neutral'. This is the statutory implementation of rule of strict liability. However, the amounts in such cases are also the predetermined amounts. The residual cases are the 'fault liability' cases where the claimants opt not to get fixed amounts of compensation and they are in position to establish the default of the offending vehicle; as required and as can be gathered by the reverse logical deduction from the language of Section 164, as assisted by the provisions of sections 165 and 166 of the Act.

(Para 10)

Further held, that liability to pay compensation has been tagged to the 'use of vehicle' in public place if the said vehicle causes accident. This itself shows that the liability to pay compensation is more attached to the vehicle than anything else. To this extent, and qua the compulsory insurance, the provision in the British 'Road Traffic Act 1988' and the Indian 'Motor Vehicle Act 1988' as amended upto 2019 are similar. However, the similarity ends here. While the Road Traffic Act of Britain does not provide any further criteria for determining the rule of liability; so there the adjudication proceeds on the 'negligence' as the rules of tortuous liability, the Motor Vehicle Act in India provides for a positive 'Fault Neutral' liability and prescribes that while claiming compensation under no fault liability provisions; the claimant shall not be required to plead or prove certain factors mentioned in these provisions. Hence it is clear that if a claimant opt to claim compensation under the rule other than 'no fault' liability rule; then he shall not be exempted from pleading and proving the factors which were exempted from pleading and proof under the rule of 'No Fault' liability. Therefore, the Motor Vehicle Act in India clearly spells out the statutory rule of liability in the form of these factors. Therefore, for adjudication of claims of compensation under the Indian Motor Vehicle Act; the law applied in Britain may not be the sole, exclusive, or even relevant law in several statutorily prescribed conditions, and law in India is much wider in its scope.

(Para 11)

Further held, that even in 'fault liability' cases the liability is attached to the 'use of vehicle' and its 'default'; which may arise on account of human neglect or error or without even any intervention of human beings. Hence liability does not bother itself with error of any person; as such, rather, it catches-up with the 'default' of the vehicle to perform as per standard expectation; for any reason whatsoever. Thus the liability is the strict; and the rule of liability is the 'Rules of strict liability'.

(Para 13)

Further held, that Section 146 of the Motor Vehicle Act prescribes a compulsory Insurance for Motor accidents claims cover. Statutorily compulsory insurance implies statutory compulsory payments of compensation by the insurer. The liability of the Insurer is so steadfast that the section 151 of the Act even creates a deemed statutory privy of contract between the third party and the insurer in certain circumstances. Therefore section 147(6) of the Act cast a duty upon the Insurer to pay the compensation covered under the statutory policy notwithstanding contrary contained in any law in force. Section 150 makes it mandatory for the Insurer to make the payment despite the fact that the Insurer was entitled to avoid or cancel or had even actually avoided or cancelled the policy, except in case where the policy was obtained by not disclosing or misrepresenting material facts. Beside this, there are very limited grounds for the insurer to avoid liability of payment, like driving by a person not qualified to drive, using vehicle for hire and reward when such vehicle is not authorized for that purpose or using a Transport vehicle for the purpose other than the permitted or driving for racing and vehicle testing. Although the Insurer has been given a right by section 170 of the Act to contest the petition on merits in case the owner fails to contest or colludes with opposite side, however this does not add to the immunity of the Insurer liability to pay as such, rather, it only enables the insurer to lead evidence on those aspects upon which the owner or the Insured himself would have led. The right of leading evidence as a party; to defeat the claim as such and the avoidance of liability as insurer are not the same thing. As a party stepping in the shoes of the insured; the insurer shall be entitled and bound to establish; by leading positive evidence; that the vehicle in question had not defaulted and that the amount claimed by the claimant was not justified. However, if the insurer fails to discharge that burden then the insurer would not enjoy any more ground of immunity than the

ones provide by section 150 of the Act.

(Para 16)

Further held, that in a case, minus any proof of negligence from either side, it would have been a liability of 50% of each of the Insurance companies. However, in the present case, the claimants have lead sufficient evidence to show that there was much negligence and default on the part of the offending vehicle and there is no evidence of the negligence or lacks of 'due care' on the part of the driver of the Innova car, but his vehicle has also defaulted to some extent. Therefore, its insurer has also to share some responsibility. Therefore, the Insurance company of the tanker has to be held liable to the extent of 70%, whereas the Insurance company of the Innova car is held liable to the extent of 30%. However, this apportionment of the liabilities between the Insurance companies would not have any impact upon the compensation awarded to the legal representatives of the driver of Innova car. Even the Tribunal has awarded compensation to the LRs of the deceased driver of the Innova car, and rightly so. This is so for two simple reasons. Firstly, it is not the negligence or lack of 'due care' of the driver of Innova car which brings some liability upon the insurance company of the Innova car, rather, it is the default of the vehicle. As discussed in foregoing paragraphs, there can be cases where driver of a vehicle has taken due care and has not been negligent in driving but still his vehicle is at fault qua the accident. Therefore, the Motor Vehicles Act makes the default of a vehicle as the test for deciding the liability for the accident and not the 'negligence' of the driver as such. The Act does not even use the word 'negligence' anywhere. Concept of 'negligence' is a judicial creation to be used only in those cases where it has resulted directly into default of the vehicle as such. In all other cases where the driver is not negligent and has driven the vehicle with reasonable or due care but the vehicle has caused accident or it has caused accident on account of lack of proper mechanical maintenance, the vehicles; and accordingly, the owner shall be liable but the driver may not be. In that situation, the accident would definitely create consequences qua the contract of insurance. The insurance company, having very limited defences under the Act, in its own capacity, shall definitely be liable. Secondly, it is not the driver Amarjeet Singh himself who has filed the claim petition. It is only his unfortunate LRs who have filed the claim petition. Under the law of compensation, the LRs are not awarded the compensation as any reward on account of the deceased being not at any fault or the deceased driver being very careful in driving the vehicle. As discussed in foregoing paragraphs, the

claimants are least concerned about negligence of any person. Rather, they are granted compensation on account of lossing earning member of the family. Therefore, the determining factor for entitlement and amount of compensation is the loss suffered by them. Since the Motor Vehicle Act also contemplates only a 'default' on the part of the vehicle for its liability of compensation in case a person dies in the same, therefore, the contribution towards liabilities can only be between the competing Insurance companies, which are to reimburse the owners as such. The claimants are not concerned about the interse apportionment of liabilities between the insurers. They are concerned only with the fact that they are compensated for the loss which they have suffered on account of death of the family member.

(Para 23)

Further held, that accordingly, the respondent Insurance Company is held liable for 70%, whereas the appellant Insurance Company is left with 30% of the liability to reimburse to the claimants.

(Para 24)

Rakesh Nehra, Senior Advocate with Rajesh K. Sharma, Advocate with Sanjeev Kodan, Advocate, *for the appellant(s)*

Ashwani Talwar, Advocate and Sahej Mahajan, Advocate and Varun Sharma, Advocate, for the Insurance Co.

K.S. Dhanora, Advocate, for the claimants/cross objectors

RAJBIR SEHRAWAT, J. (ORAL)

(1) This shall dispose of the above mentioned five appeals filed by the Insurance company and cross objections filed by the claimants, since these appeals and cross objections have arisen from the same accident, though from the claim petitions filed separately by the legal representatives of the four deceased and by one of the injured. The facts are being taken from FAO No. 2558 of 2016.

(2) The parties herein are referred to as the claimants and respondents as they are referred to in the original claim petitions.

(3) The brief facts giving rise to the present appeals are; that on 6.2.2014 Jitender Singh, Amarjeet Singh, Narender Pal Singh, Raminder Singh, Kuldeep Singh and Harbhajan Singh were going to Amritsar from Delhi in a Innova car bearing registration No. DL-10-CE-2458. Kuldeep Singh and Harbhajan Singh were sitting on the rear seat whereas, the car was bring driven by Amarjeet Singh. When they

reached in the area between Pipli and Shahbad on the national highway, the truck/tanker bearing registration No. MP-09-HG- 9347, which was going ahead of the Innova car, suddenly applied breaks. As a result, the accident had taken place. Due to the accident, the occupants of the Innova car received serious injuries. Jitender Singh, Raminder Singh and Narinder Pal Singh succumbed to their injuries at the spot, whereas, Amarjeet Singh died at LNJP Hospital, Kurukshetra. Harbhajan Singh survived as injured. On account of accident, a criminal case bearing FIR No. 46 dated 6.2.2014 was also registered at Police Station Sadar, Thanesar. Challan had been filed in the said case against respondent No.1, the driver of the alleged offending tanker. In the above said gamut of facts, four claim petitions were filed by the legal representatives of the deceased and the 5th was filed by the injured himself for the injuries sustained by him in the accident.

(4) On being put to notice, the respondent Insurance company and the driver of the offending vehicle denied the accident happening in the manner as mentioned in the claim petitions. On the contrary, it was claimed; that it has happened because of the negligence of the driver of the Innova car. The respondent Insurance company even denied the accident as ever having happened.

(5) The claimants examined the injured eye witness Harbhajan Singh as PW-3; besides other relevant witnesses. The driving licence of the driver of Innova car - Amarjeet Singh was also produced in evidence. However, no evidence was led by either the driver and owner of the offending tanker or by the respondent Insurance company.

(6) After appreciating the evidence, the Tribunal awarded the compensation as under :

1. Rs.34,99,300/- in CIS (MACP) Case No. 156 of 2014,
2. Rs.64,82,552/- in CIS (MAC) Case No. 175 of 2015,
3. Rs. 5,91,220/- in CIS (MACP) Case No. 176 of 2014,
4. Rs. 5,91,120/- in CIS (MACP) Case No. 300 of 2014,
5. Rs. 19,74,153/- in CIS (MACP) Case No. 320 of 2014.

However, the respondent Insurance company, the Insurer of the tanker, was absolved by the Tribunal on the ground that the driver of the Innova car was required to maintain a safe distance, in which he failed. Therefore, the owner of the Innova car, and consequently, the appellant Insurance company, the insurer of the said Innova car, was held liable

to make the payment. Challenging the said award, the present appeals have been filed by the Insurance company of the Innova car. For claiming enhancement, the claimants have filed cross objections.

(7) While arguing the case, the solitary argument raised by counsel forthe appellant is that the Tribunal has gone wrong in law in absolving the respondent Insurance company. The evidence led on the file categorically proves that it was the driver of the offending tanker who was negligent in driving the same. The eye witness has duly been examined to prove the assertions of the claimants. The Tribunal has totally ignored the version of the eye witness and has proceeded only on assumption that there was no safe distance maintained by the driver of the Innova car. This is despite the fact thatthere is no evidence led on the file by the respondents even to show the factthat the driver of the Innova car was not maintaining safe distance. The counsel has further submitted that the liability of the appellant Insurance company was not even in issue as per the issues framed by the Tribunal. The respondent Insurance company of the tanker has never claimed the liability tobe of the appellant Insurance company; as such. Hence, the award passed by the Tribunal deserves to be set aside. The liability of the entire amount deserves to be imposed upon the respondent Insurance company, the insurer of the offending tanker.

(8) On the other hand, counsel for the respondent Insurance company has submitted that as per the Regulation 23 of the Rules of the Road Regulations, 1989 (in short 'the Regulations of 1989'), the driver of the Innova car was required to maintain a 'safe distance'. It was his sole liability to ensure that he maintains the sufficient distance so as to enable him to apply breaks and to stop his car; in case the tanker in front of him applied sudden breaks. Counsel has relied upon the judgment of the Hon'ble Supreme Court renderedin ***Nishan Singh*** *versus* ***Oriental Insurance Company Limited***[1] in this regard. Still further counsel has relied upon the judgment passed by a Division Bench of this Court in FAO No. 5158 of 2015 titled as ***Rakesh Gulati (since deceased) through LRs*** *versus* ***Sanjiv Kumar and others*** decided on 2.12.2019. Qua the material relevant to the accident in question, counsel for the respondent Insurance company has attempted to refer to the mechanical report, as well as, site plan, which was prepared by the police in the criminal case, to show that the tanker was going on its correct side and that, in fact, impact of the accident was so huge that the Innova car was totally damaged. Hence, counsel has

[1] 2018 (2) RCR (Civil) 891

advanced the argument that the extent of the damage to the car shows that it was being driven at a high speed and without taking due care of the fact that the tanker was going in front of it. Counsel has also submitted that the fact that the chassis of the tanker was also bent from the driver side, shows the impact of the car upon the tanker, suggesting clearly that it was being driven at a high speed.

Rule of Liability and extent of liability of Insurance Company:

(9) There is plethora of earlier judgments; including the ones from the Supreme Court that the liability to pay the compensation for a motor vehicle accident is a tortuous liability and the basis to invite such liability is the negligence of the driver. If the drivers happens to be other than the owner then the liability of the owner; and thus of the insurer, is vicarious in nature. The rule of liability as based on the negligence and the vicariousness of the liability are common law concept as was devised in British practice on account of their Road Traffic Acts of 1930 and of 1988 being totally silent on that aspect. However the legal position in India; as prevalent under Motor Vehicle Act 1988 and as amended upto the year 2019; has undergone a sea change. The provisions of the Act have made a paradigm shift in the Rule and nature of liability. Under the provisions of the Act the liability has increasingly metamorphosed from a tortuous liability to a statutory liability and from being negligence based liability to a vehicle default based strict liability. The concept of the liability being based on 'negligence' of the driver and the same being vicarious both have been whittled down by the Motor Vehicle Act to the extent of being rendered almost irrelevant for the purposes of adjudication upon compensation under the Act. Statutory provisions have retained a very limited scope for theses concept. In fact the, the synoptic view of the provisions of the Act makes it clear that the legislature in India has intentionally avoided adopting the 'negligence' per se; as a determinant to fix the locus of liability. The legislature has not even used the word 'negligence' in the chapters XI and XII of the Act which make provisions relating to the compensation. The courtis not to assume that the Indian Parliament did not know the word 'negligence' or its meaning and scope. On the contrary the legislature has used the word 'negligence' or its derivatives like 'negligent' or 'negligently' in the same Act but in different a chapter and for the purposes other than defining the rule of liability. These words have been used in section 134A relating to the Protection to the Good Samaritans coming forward to help the injured in accidents; and in

section 178 relating to punishment for travelling without tickets. Therefore, it is clear that the word 'negligence' or its derivatives have deliberately not been used in the provisions defining the rule of liability, qua the claimant and third party. However, as intended to serve as the determining basis for locus of liability; the legislature has intended and used the word 'neglect' and certain other word, which are not necessarily related to the driver, and which can be totally independent of and neutral to any negligence of the driver as such. The determinants have deliberately been made much wider as compared to the restricted rule of 'negligence' of driver. Hence it would not be appropriate to tiedown the liability to 'negligence' only; though it may still be a relevant factor in some situations of the accidents and for some purposes.

(10) The Motor Vehicle Act contemplates different kinds of compensation to the victim or the legal representatives of a deceased victim of accident. Section 161 of the Act provides for fixed amount compensation in accidents of 'Hit-and-Run cases'. This compensation is 'vehicle neutral' and is granted when the offending vehicle has succeeded in running away without leaving behind its identity. Section 164 provides for the compensation against the owner and insurer if the identity of their vehicle is known; but despite there being no proof of fault on the part of their vehicle. Therefore, this compensation is 'fault neutral'. This is the statutory implementation of rule of strict liability. However, the amounts in such cases are also the predetermined amounts. The residual cases are the 'fault liability' cases where the claimants opt not to get fixed amounts of compensation and they are in position to establish the default of the offending vehicle; as required and as can be gathered by the reverse logical deduction from the language of Section 164, as assisted by the provisions of sections 165 and 166 of the Act. Therefore it is apposite to have a reference to the provisions of these sections as are reproduced hereinbelow:

> **"164. Payment of compensation in case of death or grievous hurt, etc. -** (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 or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death

or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the deathor grievous hurt 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 **of the vehicle concerned** or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

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 ofaccidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 164.

(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 ofa 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 or asa 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—

(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 anyof 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 thecase may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, theapplication 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.

Provided further that where a person accepts compensation under Section 164 in accordance with the procedure provided under Section 149, his claims petition before the Claims Tribunal shall lapse.

(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:

(3) No application for compensation shall be entertained unless it ismade within six months of the occurrence of the accident.]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]

(11) A perusal of the language of the sections mentioned above shows that liability to pay compensation has been tagged to the 'use of vehicle' in public place if the said vehicle causes accident. This itself shows that the liability to pay compensation is more attached to the vehicle than anything else. To this extent, and qua the compulsory insurance, the provision in the British 'Road Traffic Act 1988' and the Indian 'Motor Vehicle Act 1988' as amended upto 2019 are similar. However, the similarity ends here. While the Road Traffic Act of Britain does not provide any further criteria for determining the rule of liability; so there the adjudication proceeds on the 'negligence' as the rules of tortuous liability, the Motor Vehicle Act in India provides for a positive'Fault Neutral' liability and prescribes that while claiming compensation under no fault liability provisions; the claimant shall not be required to plead or prove certain factors mentioned in these provisions. Hence it is clear that if a claimant opt to claim compensation under the rule other than 'no fault' liability rule; then he shall not be exempted from pleading and proving the factors which were exempted from pleading and proof under the rule of 'No Fault' liability. Therefore, the Motor Vehicle Act in India clearly spells out the statutory rule of liability in the form of these factors. Therefore, for adjudication of claims of compensation under the Indian Motor Vehicle Act;the law applied in Britain may not be the sole, exclusive, or even relevant lawin several statutorily prescribed conditions, and law in India is much wider in its scope; as will be seen in coming paragraphs.

(12) Under section 165 the Tribunals are required to be constituted for adjudication of claims of compensation arising from the 'use of a vehicle' and not necessarily arising from the negligence of driver of such vehicle. Section 166 also enables filing of claims in case of accidents covered by section 165, i.e., not necessarily arising from the negligence of the driver of the vehicle. Therefore it is the 'use of

vehicle' on the road, which per se, invites liability forthe owner of the vehicle; and thus for the insurer; to pay compensation; in case the vehicle is involved in accident. Negligence of the driver is not, per se, the reason for inviting liability by such a vehicle. Hence it is strict liability attached to the vehicle as such. It is only when the claimant wants to claim a higher amount as the compensation that he is required to plead and prove the factors prescribed under the Act, however, these factors also are not; necessarily; attached to any negligence of the driver of the alleged offending vehicle. Such factors can also be neutral to or independent of any negligenceon the part of the driver of the alleged offending vehicle.

(13) As is clear from the language of Section 164, the factors which the claimant is exempted from pleading and proving in claims made under 'no fault liability', and which, conversely, the claimants shall be required to plead and prove in case he opts to claim higher amounts under 'fault liability' are :

> That the death or permanent disablement in respect of which the claim has been made was due to
>
> (a) any wrongful act,
>
> (b) neglect or
>
> (c) **default**
>
> (i) of the owner or owners of the vehicle or
>
> (ii) **of vehicles concerned** or
>
> (iii) of Any other person.

None of the above factors is inherently connected with the negligence on the part of the driver of the vehicle. Though negligence of the driver may become relevant in some cases when the driver; as the statutory 'any other person' does any wrongful act or neglects to do something expected of him as a reasonable man, however, the accident could be result of the wrongful act of the owner as well; even when he is not the driver. The accident could happen due to neglect of 'any other person' even if such 'any other person' was not the driver. Moreover, the accident could happen even on account of 'default' of the 'vehicle concerned' as such; without there being any wrongful act or neglect on the part of the owner or driver or on the part of any other person. Needless to say, that the 'default' in itself means failure to perform or behave as per standard expectation or as per the legal obligation; or as

mandated by the liability defining framework. The owner may do a wrongful act of requiring his employee-driver to drive a vehicle despite being aware that the vehicle was not in good roadworthy condition. In such situation, the accident could happen despite due care by the driver. The service engineer may have neglected to tighten the screws of wheel properly during the process of service and the owner or driver may not be even get cognizant of the fact. The accident could happen despite due care by the driver. The owner may have taken every possible care to keep the vehicle in perfect running condition and the drivermay have driven the vehicle with every possible or even with special and extra care but the accident could happen due to sudden and unexpected mechanical default of the breaking system of the vehicle. In all these situation the accident had happened due to 'default of the vehicle' arising from the fault of someone else than the driver or because of no fault of any living being but because of the default of the machine of the vehicle. Hence the driver shall not be liable but the vehicle; and thus its owner; and thus the insurer shall be liable. Hence, even in 'fault liability' cases the liability is attached to the 'use of vehicle' and its 'default'; which may arise on account of human neglect or error or without even any intervention of human beings. Hence liability does not bother itself with error of any person; as such, rather, it catches-up with the 'default' of the vehicle to perform as per standard expectation; for any reason whatsoever. Thus the liability is the strict; and the rule of liability is the 'Rules of strict liability'.

(14) As is clear from the above; the liability of the owner; and thus of the insurer; arises from 'use of the vehicle' and default thereof, not necessarily from the negligence of the driver of the vehicle, therefore, the claimant claiming under 'fault liability' as well; is not required to prove the negligence of the driver of the vehicle. He would be required to prove only the default of the vehicle in behaving in a manner as was expected of that vehicle. The claimant is not concerned with the negligence of any human beings as such. He can establish his case by simply establishing the facts which show that at the relevant time the vehicle did not behave as was expected of it. Reason for such default is not the concern of the claimant. Therefore the claimants, who are otherwise the legal representatives of the deceased driver, cannot be denied the benefit of compensation only because he himself was driving the vehicle at the time of the accident. Negligence of any person in some of such cases could be relevant only for determination of inter se contractual liability between the owner and the insurer or for determining the inter-se composit liabilities of

two or more insurers of more than one vehicle. In such cases, if the Insurer wants to absolve itself of liability, if it is otherwise permissible under the statutory provisions, it can lead the evidence qua such negligence and prove the same in accordance with law. Hence, proof of any negligence by claimant is not a sine- qua-non for sustaining and success of his claim. It could be only a ground for an insurer against the owner, if proved by insurer and if otherwise permitted by statutorily prescribed conditions.

(15) The negligence of the driver is also not to be presumed indiscriminately. Rather the standard of care to be taken is also statutorily defined by the Motor Vehicle Act, while prescribing punishments for driving at a speed more than prescribed for the place or driving under the influence of liquor or for dangerous driving under sections 183 to 185. To avoid charge of dangerous driving the driver is supposed to drive at the speed which can be reasonably expected of him keeping in view the nature, conditions and use of place, as well as the amount of traffic at the place. So the standard is the reasonable care expected of an ordinary person of ordinary prudence qualified to drive the vehicle. If he has taken that much care then the driver cannot be held to be negligent even if an accident happens. In such a situation the concerned vehicle shall be treated as having 'defaulted' and thus the owner and the insurer shall be liable; but the driver cannot be held to be negligent. Driver could not be taken to have faulted only because he could have avoided the accident had he taken some special and extraordinary care by applying the skills of a 'Formula Racing' driver. Therefore, even the legal representatives of such driver cannot be denied compensation only because the accident could have been avoided by such a driver, unless such driver is the owner himself.

(16) Section 146 of the Motor Vehicle Act prescribes a compulsory Insurance for Motor accidents claims cover. Statutorily compulsory insurance implies statutory compulsory payments of compensation by the insurer. The liability of the Insurer is so steadfast that the section 151 of the Act even creates a deemed statutory privy of contract between the third party and the insurer in certain circumstances. Therefore section 147(6) of the Act cast a dutyupon the Insurer to pay the compensation covered under the statutory policy notwithstanding contrary contained in any law in force. Section 150 makes it mandatory for the Insurer to make the payment despite the fact that the Insurer was entitled to avoid or cancel or had even actually

avoided or cancelled the policy, except in case where the policy was obtained by not disclosing or misrepresenting material facts. Beside this, there are very limited grounds for the insurer to avoid liability of payment, like driving by a person not qualified to drive, using vehicle for hire and reward when such vehicle is not authorized for that purpose or using a Transport vehicle for the purpose other than the permitted or driving for racing and vehicle testing. Although the Insurer has been given a right by section 170 of the Act to contest the petition on merits in case the owner fails to contest or colludes with opposite side, however this does not add to the immunity of the Insurer liability to pay as such, rather, it only enables the insurer to lead evidence on those aspects upon which the owner or the Insured himself would have led. The right of leading evidence as a party; to defeat the claim as such and the avoidance of liability as insurer are not the same thing. As a party stepping in the shoes of the insured; the insurer shall be entitled and bound to establish; by leading positive evidence; that the vehicle in question had not defaulted and that the amount claimed by the claimant was not justified. However, if the insurer fails to discharge that burden then the insurer would not enjoy any more ground of immunity than the ones provide by section 150 of the Act.

Liability in the present Case

(17) Having heard counsel for the parties, and in view of the above position of legal conspectus, this Court finds significant substance in the arguments of counsel for the appellant insurance company. The claimants haveduly examined the sole surviving injured witness in the case. He is the best person who could have thrown some light on the facts which had actually happened at the relevant time. He appeared before the Tribunal as PW-3 and has given the details as to how the accident had taken place on account of negligence of the driver of the offending tanker. He has categorically stated that the offending tanker was being driven in a rash and negligent manner andin violation of the rules of the road. Not only that, the driver of the tanker applied the breaks suddenly; without there being any reason therefore. This testimony of Harbhajan Singh, PW-3 injured witness; was put to strict cross examination by the respondents. However, nothing significant could be brought out from his testimony so as to impeach the evidentiary value of the same. Hence, to a great extent, the claimants have succeeded in proving that it was the negligence of the driver of the tanker which resulted in the accident.

(18) Not only this, it has also come on record that the driver of the tanker was caught in the first instance, but then, he fled away from the scene. Although the driver of the offending tanker has filed written statement tocontrovert the assertions made by the appellants, however, he has not even dared to appear as a witness before the Tribunal so as to face the cross examination. Therefore, the assertions made by the claimants, which have been duly supported by their evidenced, has gone totally un-rebutted on the part of the respondents. Even the respondent Insurance company has not led any evidence of any kind to rebut the assertions of the claimants that the accident had taken place due to negligence of the driver of the offendingtanker. Once; being a respondent, they had taken a plea of negligence of the driver of the Innova car, then it was incumbent upon them to substantiate such assertion by leading a positive evidence. However, the respondents-Insurance company have failed in proving those assertions made in their written statements. Not only that default of the vehicle insured by the appellant insurance company was not even at issue as per the issues framed by the Tribunal.

Safe Distance:

(19) Learned counsel for the respondent Insurance company has submitted that the Driver of the Innova car should have maintained safe distance. Since he had not maintained safe distance so he is responsible for the accident. The counsel has relied upon Regulation No. 23 of the Regulations of 1989, which is reproduced hereunder :

> **"23. Distance from Vehicles in front. -** The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."

However, this Court does not find much substance in the argument. No doubt, the Regulation 23 prescribes that the vehicle following should maintain thesafe distance, however, the same is a rule of road advised to be observed by drivers when driving on the roads; and same can hardly be made a criteria for assessing the compensation or determining the locus of liability, as such. The measure of 'safe distance' has so many underlying factors and unless all the ingredients, which are required to be proved for showing lack of safe distance, are brought on record, it cannot be used as any legal mean qua the issue of compensation. Needless to say, that 'safe distance' is not defined anywhere in law. Speaking scientifically, 'safe distance' is a relative concept which depends upon the differential speed of the vehicles, their

respective mass/weights, the breaking systems and technical efficacy of the breaking systems, the friction quotient provided by the road surface, as well as, the aptitude of the driver towards speed, besides the natural reflex response time of individual human being. Given the appropriate balance between these factors, even a distance of one foot can be 'safe distance'. Therefore, it is not uncommon to see the vehicles on the road being driven neck-to-neck. If there is no appropriate balance between these factors than any distance in visibility is no safe distance. As is clear from above, except the aptitude towards the speed; all other factors constituting the concept of 'safe distance' are totally external or beyond the control of the individuality of the drivers. There is no evidence on file that the vehicle insured by the appellant was being driven at any excessive or abnormal speed. If one is to adopt the concept of 'safe distance' as a ground to avoid legal liability then he has to establish the above said factors underlying the concept of 'safe distance' in terms of their being legal facts. None of these facts have been even remotely pleaded or proved by the respondent Insurance company. In absence of any proof of such aspects, the concept of 'safe distance' becomes only an assumption worse than the arbitrary guess-work. Therefore, Tribunal has gone wrong in assuming that the driver of Innova car was at fault. Not only this, the Regulation No.24 of the Regulations of 1989 also prescribed that the vehicle going ahead shall not apply sudden breaks except for a sufficient reason. The said regulation is reproduced herein below:-

> **"24. Abrupt brake –** No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons."

(20) In the present case, there is no reason even disclosed by the driver of the offending Tanker as to why he applied the breaks, much less to speak of leading any evidence on that aspect. Moreover, although any record of the criminal case is totally irrelevant for the purpose of decision of the claim petitions as such, however, even as per the site plan prepared by police; and referred to by the counsel for the respondent Insurance company; there is no possibility of any vehicle or anything coming in front of the offending tanker at the place where the accident had taken place. It is a one-way national highway and there is no entrance or exit point at the said place. Therefore, the possibility of there being any sufficient reason for applying sudden breaks is, otherwise also, very weak.

(21) Although counsel for the respondent has relied upon the

judgments rendered by the Supreme Court in ***Nishan Singh's case*** *(supra)* andby the Division Bench of this Court in ***Rakesh Gulati' case*** *(supra)*, however, this Court finds the same to be totally distinguishable. In the case before the Supreme Court, there was no pleading that the driver of the offending car was negligent or that he had applied breaks suddenly. Whereas, in the judgment of High Court mentioned above; the vehicle was at a toll plaza, which requires everybody to slow down and to stop eventually. Hence, the facts of these cases are altogether distinguishable as compared to the present case, where there is positive evidence that the driver of offending tanker was driving carelessly and that the breaks were suddenly applied by the driver of the offending vehicle; without there being any reason, resulting into defaults of the Tanker. Hence, this Court finds that the above said judgments do not support the case of the respondent Insurance company, in any manner.

(22) However, one cannot lose sight of fact that the Innova car has struck from behind. It has also come in evidence that the Innova car had been following the tanker for a distance of about 3-4 kilometers. Therefore, the driver of the Innova car had seen the careless driving of driver of the tanker for quite some time. Even if the driver of the offending tanker was driving the same negligently and he applied the breaks without any sufficient reason, the accident could have been avoided had the driver of the Innova car taken special and extra care to avoid the accident. However, as discussed above, the special and extra care is not the same thing as 'due care', which is the requirement to avoid liability of the driver in an accident. The Regulations of 1989 regarding driving on road, which are commonly known as the 'Rules of the Road' give rise to certain underlying assumptions. For example 'keep to the left' in Indian driving scenario creates an assumption that, normally, every driver on the road shall drive his vehicle on the left side of the road. Likewise, there are other assumptions in driving. When one takes due care and observes due diligence in one's driving based on those assumptions then it can be said that one has been driving with due care. In case of accident in such a situation, such driver cannot be held liable for such accident. But it can very well happen that all or some of such assumptions are shattered by a driver of another motor vehicle. In such a situation, a driver who has observed the assumptions being shattered by another driver, can take special care so as to avoid accident; at any cost. Such a special care can be categorized as extra care. There is a very thin line separating the two. But accident being an accident can still happen for

some other reasons despite extra care being taken by later driver. While driving on the road even the driver of the Innova car, possibly, could be extra alert to compensate for the negligence or carelessness of the driver of the tanker, being aware of the fact that violation of the assumption underlying of the rules of the road can happen at any time; either on account of any factor beyond the control of the vehicle going in front or because of negligence of driver of that vehicle. In the present case, although there is nothing on record to show any negligence or lack of due care by the driver of the Innova car, however, the fact remains that the Innova car defaulted in performing as could be possibly expected of it; for undisclosed reasons. Therefore some liability has to be shared by the Insurance company of the Innova car as well.

(23) In a case, minus any proof of negligence from either side, it would have been a liability of 50% of each of the Insurance companies. However, in the present case, the claimants have lead sufficient evidence to show that there was much negligence and default on the part of the offending vehicle and there is no evidence of the negligence or lacks of 'due care' on the part of the driverof the Innova car, but his vehicle has also defaulted to some extent. Therefore, its insurer has also to share some responsibility. Therefore, the Insurance company of the tanker has to be held liable to the extent of 70%, whereas the Insurance company of the Innova car is held liable to the extent of 30%. However, this apportionment of the liabilities between the Insurance companies would not have any impact upon the compensation awarded to the legal representatives of the driver of Innova car. Even the Tribunal has awarded compensation to the LRs of the deceased driver of the Innova car, and rightly so. This is so for two simple reasons. Firstly, it is not the negligence or lack of 'due care' of the driver of Innova car which brings some liability upon the insurance company of the Innova car, rather, it is the default of the vehicle. As discussed in foregoing paragraphs, there can be cases where driver of a vehicle has taken due care and has not been negligent in driving but still his vehicle is at fault qua the accident. Therefore, the Motor Vehicles Act makes the default of a vehicle as the test for deciding the liability for the accident and not the 'negligence' of the driver as such. The Act does not even use the word 'negligence' anywhere. Concept of 'negligence' is a judicial creation to be used only in those cases where it has resulted directly into default of the vehicle as such. In all other cases where the driver is not negligent and has driven the vehicle with reasonable or due care but the vehicle has

caused accident or ithas caused accident on account of lack of proper mechanical maintenance, the vehicles; and accordingly, the owner shall be liable but the driver may not be.In that situation, the accident would definitely create consequences qua the contract of insurance. The insurance company, having very limited defences under the Act, in its own capacity, shall definitely be liable. Secondly, it is not the driver Amarjeet Singh himself who has filed the claim petition. It is only his unfortunate LRs who have filed the claim petition. Under the law of compensation, the LRs are not awarded the compensation as any reward on account of the deceased being not at any fault or the deceased driver being very careful in driving the vehicle. As discussed in foregoing paragraphs, the claimants are least concerned about negligence of any person. Rather, they are granted compensation on account of lossing earning member of the family. Therefore, the determining factor for entitlement and amount of compensationis the loss suffered by them. Since the Motor Vehicle Act also contemplates only a 'default' on the part of the vehicle for its liability of compensation in case a person dies in the same, therefore, the contribution towards liabilities can only be between the competing Insurance companies, which are to reimburse the owners as such. The claimants are not concerned about the inter- se apportionment of liabilities between the insurers. They are concerned only with the fact that they are compensated for the loss which they have suffered on account of death of the family member.

(24) Accordingly, the respondent Insurance company is held liable for 70%, whereas the appellant Insurance company is left with 30% of the liability to reimburse to the claimants.

(25) No other argument was raised.

(26) Since the appeals filed by the Insurance company are being disposed of, therefore, counsel for the claimants has submitted that he does not want to press the cross objections.

(27) In view of the above, the appeals filed by the Insurance companyof the Innova car are partly allowed. The averments made by the appellant Insurance company are accepted to the extent mentioned hereinabove and the award is ordered to be modified in the above terms. The cross objections are dismissed as withdrawn.

Shubreet Kaur