

ACC.....*Subject Index (Topic Wise)*

ACCIDENT

Injuries sustained — Death of victim — Proof of death being result of injuries sustained in accident arising out of use of motor vehicle — Medical evidence that deceased died due to myocardial infarction leading to cardio respiratory failure — No proof that victim suffered any injury by sudden application of brakes of vehicle — No evidence that there was any external or internal injury or that heart attack caused because of sudden application of brakes — No nexus between alleged injuries and death — No claim entitled.

I (2007) ACC 244 (Himachal Pradesh HC)

AMENDMENT

Motor Vehicles Act, 1988 — Sections 163A and 166 — Claim Petition — Amendment of — Change of petition made under Section 166 to one under Section 163A — Permissibility — Abundantly clear that cause of action in both proceedings is accident — Permitting of such amendment depends on facts of given case — In instant case, annual income of injured was less than Rs. 40,000 p.a. — No impediment on part of Tribunal to allow claimant to amend his claim petition.

I (2007) ACC 91 (Gauhati HC) (DB)

AMOUNT CLAIMED

Compensation — Award in excess of claimed amount — Legality — Claimants restricted their claim to Rs. 8,00,000 — Evidence on record warrants quantification of compensation payable at Rs. 14,00,068 — Court not barred to award this latter amount.

I (2007) ACC 1 (Madras HC)

APPEAL

Motor Vehicles Act, 1988 — Sections 149(2), 170 and 173— Maintainability — Absence of specific order by Tribunal under Section 170 of Act, granting permission to insurer to contest case on merits — Insurer held liable — Hence present appeal — Supreme Court viewed that mere omission on part of Court to do something shall not prejudice any party — In instant case, failure of Tribunal to dispose of application, undoubtedly, prejudiced insurer to great extent — Its entitlement to file appeal jeopardised — Very right to file appeal dangles on decision that ought to have been taken by Tribunal on application under Section 170 — This Court prevented from even deciding question of maintainability of present appeal — Award of Tribunal passed without disposal of important interlocutory application unsustainable — Set aside — Matter remanded.

I (2007) ACC 201 (Kerala HC)

— Motor Vehicles Act, 1988 — Section 173(2) — Maintainability — Award amount less than Rs. 10,000 — No appeal can be preferred in view of provisions of Section 173(2) of Act.

I (2007) ACC 184 (Uttaranchal HC)

— Workmen's Compensation Act, 1923 — Section 30 — Maintainability — Commissioner, not at all, appreciated evidence led by parties in correct perspective — This amounts to substantial question of law being raised — Appeal maintainable.

I (2007) ACC 38 (Himachal Pradesh HC)

APPEAL BY INSURER

Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer challenging liability — Cross-objections by owner and driver of vehicle — Maintainability — Statutory amount as required under Section 173, not deposited by owner or driver — On face of it, cross-objections not maintainable.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

— Motor Vehicles Act, 1988 — Section 173 — Decree obtained by claimants by playing fraud on insurer — Challenge against — Claimants suppressed fact that lorry involved in accident was owned by deceased himself who was driving vehicle at relevant time — Policy covered risk of only third party, risk of owner insured not covered — Claimants falsely alleged that vehicle was owned by one 'M' — Fraud vitiates entire proceedings — In interest of justice award of Tribunal liable to be set aside.

I (2007) ACC 15 (Madras HC)

— Motor Vehicles Act, 1988 — Section 170 — Impleading insurer in certain cases — Tribunal not permitted insurer's application under Section 170 — No finding regarding collusion between owner and claimants — Insurer not allowed to challenge quantum of compensation.

I (2007) ACC 87 (Uttaranchal HC) (DB)

— Motor Vehicles Act, 1988 — Sections 170 and 173 — Motor Accident Claim — Compensation awarded — Appeal by insurer challenging quantum — Maintainability — In instant case, owner of vehicle contested claim — Insurer could not prefer appeal, even if owner joined him as party appellant — High Court wrongly allowed appeal at instance of insurer — Impugned order set aside — Award of Tribunal restored.

I (2007) ACC 85 (SC)

— Constitution of India, 1950 — Article 226 — Motor Vehicles Act, 1988 — Sections 149(2) and 173 — Writ petition against award of Tribunal — Maintainability — Liability sought to be denied by alleging breach of terms and conditions of policy — Quantum of compensation also challenged — Statutory right/remedy of appeal under Section 173 of Motor Vehicles Act available — Insurer, instead of availing same filed present writ petition — Petitioner seeks to make remedy of statutory appeal available to it redundant or enlarge scope of restricted right of appeal — Same cannot be allowed — Writ petition not maintainable.

I (2007) ACC 296 (Gauhati HC)

APPORTIONMENT OF LIABILITY

Practice and Procedure — Motor Accident Claim — Procedure for avoiding second litigation by deciding rights and liabilities as amongst plaintiffs and defendants as well as amongst defendants themselves *inter se* in same trial, known as inter-pleader, unknown to CPC — MACT can only apportion liability amongst defendants but not say that one defendant will pay another this sum, on basis of liability determined as between two defendants.

I (2007) ACC 157 (Allahabad HC)

APPORTIONMENT OF NEGLIGENCE

Composite negligence — Liability of joint tortfeasors — Apportionment of — Accident between 2 trucks — Drivers of both vehicles liable — Injured not in position to quantify or qualify apportionment of each vehicle — Both motor vehicles jointly and severally liable to pay compensation — Choice of claimant to sue both or claim compensation from one of joint tortfeasors — No apportionment of claim between joint tortfeasors — Compensation amount can be recovered by any of them.

I (2007) ACC 36 (Madhya Pradesh HC)

ARBITRATOR

Insurance — Goods insured — Loss due to fire — Assessment of loss by Arbitrators — Rs. 10,64,146 over and above loss assessed by Surveyors found payable — Appeal by insurer — Total insurance cover for goods was Rs. 45,00,000 — In view of sale and purchase during relevant period and closing stock one day before accident, respondent held entitled to said sum — All documents analysed minutely before pronouncing award — Failure to show Arbitrators misconducted or award not in terms with policy — Award upheld — Insurer liable to pay Rs. 10,64,146 besides Rs. 26,60,243 assessed by Surveyors.

I (2007) ACC 226 (Punjab & Haryana HC)

BREACH OF POLICY CONDITION

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy — Burden to prove — On insurer — Liability — Issue of driving licence of driver of offending bus, being fake, raised by insurer — No evidence led in support — Bus driver produced copy of licence before Tribunal — Same found valid and genuine — Insurer utterly failed to establish flouting of terms and conditions of policy — Further plea that at relevant time bus overloaded — Tribunal held that accident occurred due to rash and negligent driving and not due to overloading — Bus comprehensively insured for third party insurance — Insurer bound to pay compensation to passengers travelling in said bus.

I (2007) ACC 184 (Uttaranchal HC)

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of policy terms and conditions — Driving licence — Validity — Appeal by insurer challenging liability fastened upon it — Plea, licence of driver fake and mere renewal would not convert same to valid one, cannot be accepted — Controversy in question concluded by law laid down by Apex Court in *Swaran Singh's* case — Employer not negligent in any manner in employing driver — Insurer rightly held jointly and severally liable along with owner and driver of offending vehicle.

I (2007) ACC 233 (Punjab & Haryana HC)

— Motor Vehicles Act, 1988 — Sections 2(10), 3, 14 and 149(2) — Driving Licence — Non-renewal — Liability of insurer — Driver once licensed, continues to possess ability to drive vehicle unless proved that he incurred any physical disability to drive motor vehicle — Non-renewal of licence would not disable him, as such, to drive vehicle — Such omission of driver would entail infraction of provisions of Act for which he may be appropriately punished — Same however would not permit him to be treated as “not duly licensed” — Insurer liable.

I (2007) ACC 316 (Jammu & Kashmir HC)

— Motor Vehicles Act, 1988 — Section 147 — Liability of Insurer towards third parties — Liability denied contending, car used for hire or reward which is not covered by policy — No evidence, oral or documentary, led by insurer to prove contention — Provisions of policy makes clear that insurer is liable to third parties in case of their death or bodily injuries — In present case, as per un rebutted evidence, claimant who was travelling has not either hired or paid any reward — Claimant becomes third party — Insurer liable.

I (2007) ACC 338 (Andhra Pradesh HC)

CHARGE-SHEET

Negligence — Ascertainment — Accident between van and lorry — Negligence of lorry driver alleged — Same cannot be judged merely on ground that he was charge-sheeted

— Negligence has to be proved by positive evidence.

I (2007) ACC 330 (Andhra Pradesh HC)

CIVIL DEATH

Insurance Policy — Lapsed for non-payment of premium — Suit for declaration respecting civil death of insured, having not been heard of by anybody for last 7 years — Entitlement to get benefits of policy — Courts below refused to draw presumption of civil death of insured — Even death certificate not produced by claimants — Further, after 1992, no premium paid — Policy lapsed — Insurer rightly refused to disburse benefits of his insurance policy.

I (2007) ACC 334 (Punjab & Haryana HC)

COLLUSION

Motor Vehicles Act, 1988 — Section 170 — Permission to contest claim on all grounds — Petition filed by insurer — Collusion between claimants and owner — Owner insured not contesting claim petition seriously and effectively — Insurer can seek and be granted permission to contest claim on all grounds open to owner — Claimants have no say in such petition — Tribunal, while exercising discretion, has to decide grant of permission.

I (2007) ACC 235 (Andhra Pradesh HC)

COMMENCEMENT OF POLICY

Motor Vehicles Act, 1988 — Section 146 — Contract Act, 1872 — Section 23 — Vehicle Insurance — Necessary against third party risk — Failure — Against public good and public interest — Insurance policy — Premium paid on particular date — Insured cannot opt for date of commencement of insurance coverage, after such payment — Same, against mandate of Section 146 of Act of 1988 that no vehicle be plied without valid insurance coverage — Insurer directed to pay compensation amount to claimants — Tribunal to decide question of fact as to when actual liability of insurer commenced — If insurer found not liable, there shall be direction to realise award amount from owner insured.

I (2007) ACC 228 (Kerala HC)

COMPREHENSIVE POLICY

Motor Vehicles Act, 1939 — Section 95(2) [Section 147(2) of Motor Vehicles Act, 1988] — Liability of Insurer — Limits of — Comprehensive policy — Death of 2 persons out of use of vehicle in question — Liability of insurer fixed at Rs. 50,000, rest of amount held payable by owner — Hence appeal — Contention of owner, since nature of policy comprehensive, Tribunal erred in not fastening entire liability upon insurer — Rejected — Merely because policy comprehensive, insurer did not automatically acquire unlimited liability for third party risks — Policy comprehensively covered damage to vehicle and not to third party risks — Order upheld.

I (2007) ACC 27 (Patna HC) (DB)

COURSE OF EMPLOYMENT

Workmen's Compensation Act, 1923 — Section 30 — Death During Employment — Deceased cleaner on vehicle insured with appellant — Appeal against liability — Contention of appellant, workman sustained injuries while drilling insured vehicle 'rig' as rig but not while using vehicle as motor vehicle, insurer not liable — Rejected — Insurance policy comprehensive one — Separate premium received covering risk of employees — No exclusion clause — Admittedly, deceased was operating 'rig' as rig operator under insured — Risk covered by payment of extra premium — Insurer liable to

indemnify insured though vehicle was not in use as motor vehicle — Liability upheld.

I (2007) ACC 69 (Madras HC)

CROSS-OBJECTION

Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer challenging liability — Cross-objections by owner and driver of vehicle — Maintainability — Statutory amount as required under Section 173, not deposited by owner or driver — On face of it, cross-objections not maintainable.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

DEDUCTION (PERSONAL EXPENSES)

Principles of Assessment — Deduction of 1/3rd towards personal expenses — Deducting such amount twice, first from monthly income and secondly from total amount of compensation — Apparently illegal — Deduction cannot be made twice.

I (2007) ACC 87 (Uttaranchal HC) (DB)

— Quantum — Fatal — Reduction — Deduction towards personal expenditure — Deviation from 1/3rd rule — Tribunal erred in deducting 1/4th sum out of total compensation amount — It should have deducted 1/3rd — Award amount reduced accordingly.

I (2007) ACC 168 (Jammu & Kashmir HC)

DEPENDENT

Assessment of Dependency — Death of wife — Claimant husband — Deceased earning member — Husband practising as advocate in small district — Absence of evidence regarding earnings of husband — Cannot be said that he was earning any substantial amount — Tribunal rightly held claimant dependant upon deceased.

I (2007) ACC 87 (Uttaranchal HC) (DB)

DEPENDENCY

Principles of Assessment — Income — Deducting more than 1/3rd towards personal expenses — Legality — Admittedly, net pay of deceased Rs. 7,545 — Appropriate to assess monthly contribution to claimants at Rs. 5,000 — Tribunal erred in assessing same at Rs. 4,000.

I (2007) ACC 79 (Andhra Pradesh HC)

DISMISS IN DEFAULT

Motor Vehicles Act, 1988 — Section 166 — Claim petition — Dismissal for mere default in appearance of claimant — Legality — No provision in Act and/or Rules permitting or empowering Tribunal to dismiss petition for default — Same can be done if claimant completely failed to prove his claim by failing to appear, take requisite steps and/or adduce evidence — In instant case, claim petition dismissed on mere ground of default — No ground for dismissal — Impugned order of Tribunal not legally sustainable — Set aside.

I (2007) ACC 34 (Gauhati HC)

DISMISSAL

Motor Vehicles Act, 1988 — Section 166 — Civil Procedure Code, 1908 — Order 18 — Claim petition — Dismissal, for want of examination of victim — Legality — Petitioner sustained only simple injuries — Wound certificate marked through one of co-passengers

who too sustained injuries — Provisions of Order 18 and rules of evidence do not insist that party should necessarily be examined to prove case — Party entitled to prove his case by examining any competent witness — Tribunal ought not to have dismissed petition on such ground alone — Dismissal bad in law — Petitioner entitled to global compensation of Rs. 10,000 with interest @ 6% p.a.

I (2007) ACC 294 (Karnataka HC)

DISHONOUR OF PREMIUM CHEQUE

Motor Vehicles Act, 1988 — Section 147 — Policy of Insurance — Cancellation due to dishonour of cheque towards premium — Liability of insurer — Liability statutory — Insurer liable to pay — However, Tribunal granted right of recovery to insurer — Rights of insurer already been protected — No merit in appeal of insurer.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

DRIVING LICENCE

Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer — Issue regarding validity of driving licence of offending driver — Submission of insurer, specific issue that licence not valid, raised before Tribunal — Hence, liability denied — In these circumstances, case remanded to decide issue as to validity of driving licence — Thereafter liability to pay compensation to be decided.

I (2007) ACC 75 (Allahabad HC) (DB)

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy — Burden to prove — On insurer — Liability — Issue of driving licence of driver of offending bus, being fake, raised by insurer — No evidence led in support — Bus driver produced copy of licence before Tribunal — Same found valid and genuine — Insurer utterly failed to establish flouting of terms and conditions of policy — Further plea that at relevant time bus overloaded — Tribunal held that accident occurred due to rash and negligent driving and not due to overloading — Bus comprehensively insured for third party insurance — Insurer bound to pay compensation to passengers travelling in said bus.

I (2007) ACC 184 (Uttaranchal HC)

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of policy terms and conditions — Driving licence — Validity — Appeal by insurer challenging liability fastened upon it — Plea, licence of driver fake and mere renewal would not convert same to valid one, cannot be accepted — Controversy in question concluded by law laid down by Apex Court in *Swaran Singh's* case — Employer not negligent in any manner in employing driver — Insurer rightly held jointly and severally liable along with owner and driver of offending vehicle.

I (2007) ACC 233 (Punjab & Haryana HC)

— Motor Vehicles Act, 1988 — Sections 2(10), 3, 14 and 149(2) — Non-renewal — Liability of insurer — Driver once licensed, continues to possess ability to drive vehicle unless proved that he incurred any physical disability to drive motor vehicle — Non-renewal of licence would not disable him, as such, to drive vehicle — Such omission of driver would entail infraction of provisions of Act for which he may be appropriately punished — Same however would not permit him to be treated as “not duly licensed” — Insurer liable.

I (2007) ACC 316 (Jammu & Kashmir HC)

— Motor Vehicles Act, 1988 — Section 149(2) — Validity — Appreciation of evidence — Insurer failed to plead and prove that driver not duly licensed — Liability — Insurance

Company totally failed to discharge its burden — Accident occurred on 31.5.1994 — Letter of RTO produced showing validity of driving licence from 5.2.1991 to 17.1.1994 and from 30.12.1994 to 29.12.1997 — No official produced to prove said endorsement — Insurer liable to pay compensation.

I (2007) ACC 221 (Uttaranchal HC)

— Motor Vehicles Act, 1988 — Section 3 — Motor Vehicles Rules, 1991 — Rule 41A — Validity — Authority to drive public service vehicle — As per licence, driver authorised to drive heavy motor vehicles — Same includes heavy goods and heavy passenger vehicles — Even in absence of any public service vehicle endorsement, driver authorised to drive such vehicle — No violation of terms and conditions of policy — Insurer liable to pay compensation amount.

I (2007) ACC 265 (Jammu & Kashmir HC)

— Motor Vehicles Act, 1988 — Sections 2(16), 2(17), 2(35), 2(47) and 3 — J&K Motor Vehicles Rules, 1991 — Rule 4(1)(a) — Validity — Liability of insurer — Driver of offending vehicle authorised to drive light, medium and heavy motor vehicles — Heavy transport vehicle includes heavy goods and heavy passenger motor vehicles — Licensing Authority also authorised driver to drive public service vehicle all over India — Licence valid and effective — No policy term or condition violated — Insurer liable — Condition imposed by Tribunal regarding recovery of amount from owner and driver, not sustainable, set aside.

I (2007) ACC 241 (Jammu & Kashmir HC)

— Motor Vehicles Act, 1939 — Section 96(2) [Motor Vehicles Act, 1988 — Section 149(2)] — Validity — Liability of insurer — Driver at relevant time had licence authorising him to drive LMV, MMV and Heavy Goods vehicle — Accident occurred while driving tractor, during insurance cover — Licence valid — Even if it is not, same would only be technical breach of provisions of Act — Not sufficient to exonerate insurer from its liability — Insurer liable.

I (2007) ACC 196 (Gujarat HC)

EMPLOYMENT

Workmen's Compensation Act, 1923 — Sections 3 and 30 — Death during employment — Employer's liability to compensate — Proof of employment and fact of suffering accidental death during course of employment — As per claimants, deceased employed with respondents for breaking stones in their mines — Huge stone fell and hit head of deceased while he was working — Version of claimants supported by contemporaneous evidence — Claim refuted by respondents — Fact of employment disputed — Contention, no mine either in his own name or in name of any member of his family — Rejected — Statements of co-workers supporting claimants' case in entirety, cannot be disbelieved — Conclusion that deceased was employed for breaking and extracting stones in mine of respondents, can be drawn — Contrary finding of Commissioner, being based on total misappreciation and misreading of evidence, liable to be set aside — Respondents liable.

I (2007) ACC 38 (Himachal Pradesh HC)

EMPLOYER

Workmen's Compensation Act, 1923 — Sections 2(1)(n), 2(1)(e) — Workman — Employer — Mechanic engaged for repairing installed pump — Death while doing work — Deceased workman — Liability of employer to compensate — Deceased engaged only by appellant No. 3 — Contention of appellants 1 and 2 that they are not liable, not acceptable — Workman was engaged for repairing motor installed and fitted within

premises jointly belonging to appellants — Hence, all appellants equally liable to pay compensation amount.

I (2007) ACC 190 (Madhya Pradesh HC)

EMPLOYMENT INJURY

Employees' State Insurance Act, 1948 — Second Schedule Entry No. 32 — Entitlement to compensation — Employee sustained blunt injury in eye resulting in diminution of vision — Eye Surgeon found 6/36 loss of vision — As against it Medical Board opined no disability hence no loss of earning capacity provisionally or finally — Unjustified — Said injury falls within purview of Entry No. 32, Second Schedule of Act — Employee entitled to 30% loss of earning capacity — ESI Court rightly relied on findings of eye specialist in preference to view of Medical Board — Order upheld.

I (2007) ACC 177 (Allahabad HC)

EVIDENCE

Accident — Negligence of driver of one vehicle — Insurance Companies of both vehicles held liable — Hence appeal — Accident between tempo and tractor trailer — As per documentary evidence and judgment of criminal Court, clear that trailer collided with tempo — Driver of tractor accepted his guilt — If trailer was responsible for accident, apparently, reason for accident cannot be thrown on tempo — Negligence in instant case is only of tractor driver — Finding of Tribunal that both drivers equally responsible, not supported by materials on record — Insurer of tractor alone liable to compensate claimants — Insurer of tempo i.e. present appellant not liable.

I (2007) ACC 160 (Madras HC)

— Accident — Offending vehicle scooter — Dispute as to who was driving vehicle at relevant time — Appreciation of evidence on record — It clearly establishes that 'P' was driving scooter and deceased was only pillion rider — Tribunal by merely relying upon untrustworthy evidence of R.W. 2, erred in holding that deceased was driving scooter at time of accident — Compensation payable.

I (2007) ACC 1 (Madras HC)

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy — Burden to prove — On insurer — Liability — Issue of driving licence of driver of offending bus, being fake, raised by insurer — No evidence led in support — Bus driver produced copy of licence before Tribunal — Same found valid and genuine — Insurer utterly failed to establish flouting of terms and conditions of policy — Further plea that at relevant time bus overloaded — Tribunal held that accident occurred due to rash and negligent driving and not due to overloading — Bus comprehensively insured for third party insurance — Insurer bound to pay compensation to passengers travelling in said bus.

I (2007) ACC 184 (Uttaranchal HC)

— Contributory Negligence — Deceased held guilty upto 50% — Challenge against — Appeal by claimants — Tribunal given positive finding that accident occurred due to rash and negligent act of truck driver as he had hit window of bus from behind and dragged it to considerable distance — In such situation, hardly any negligence can be attributed to deceased — No evidence that deceased tried to board running bus — Even if same assumed, in that event also, negligence would be attributed to conductor or driver of bus who failed to perform their duty in getting windows shut before starting bus — No negligence can be attributed to deceased — Claimants entitled to whole of compensation amount.

I (2007) ACC 274 (Punjab & Haryana HC)

- Workmen's Compensation Act, 1923 — Sections 3 and 30 — Death during employment — Employer's liability to compensate — Proof of employment and fact of suffering accidental death during course of employment — As per claimants, deceased employed with respondents for breaking stones in their mines — Huge stone fell and hit head of deceased while he was working — Version of claimants supported by contemporaneous evidence — Claim refuted by respondents — Fact of employment disputed — Contention, no mine either in his own name or in name of any member of his family — Rejected — Statements of co-workers supporting claimants' case in entirety, cannot be disbelieved — Conclusion that deceased was employed for breaking and extracting stones in mine of respondents, can be drawn — Contrary finding of Commissioner, being based on total misappreciation and misreading of evidence, liable to be set aside — Respondents liable.

I (2007) ACC 38 (Himachal Pradesh HC)

- Workmen's Compensation Act, 1923 — Section 3 — Death during employment — Employer's liability to compensate — Quantum of compensation — Claim for enhancement — Employer of deceased deposed differently on two occasions, regarding income — Salary certificate issued by him, showing salary as Rs. 4,200 p.m., not proved according to law — Self -same owner, in investigation by insurer, deposed as paying Rs. 3,000 p.m. — Assessment of compensation accordingly — No illegality or irregularity in impugned judgment — Upheld.

I (2007) ACC 171 (Calcutta HC) (DB)

- Documentary evidence — Proof of contents — Unless sufficient opportunity afforded to person affected by particular document, for rebuttal, which is not public document, same may not be taken as strict proof of its contents.

I (2007) ACC 221 (Uttaranchal HC)

- Motor Vehicles Act, 1988 — Section 149(2) — Driving Licence — Validity — Appreciation of evidence — Insurer failed to plead and prove that driver not duly licensed — Liability — Insurance Company totally failed to discharge its burden — Accident occurred on 31.5.1994 — Letter of RTO produced showing validity of driving licence from 5.2.1991 to 17.1.1994 and from 30.12.1994 to 29.12.1997 — No official produced to prove said endorsement — Insurer liable to pay compensation.

I (2007) ACC 221 (Uttaranchal HC)

- Negligence — Ascertainment — Accident between van and lorry — Negligence of lorry driver alleged — Same cannot be judged merely on ground that he was charge-sheeted — Negligence has to be proved by positive evidence.

I (2007) ACC 330 (Andhra Pradesh HC)

- Negligence — Contributory negligence — Alleged, but not proved — Truck coming from opposite direction, hit claimant on motorcycle — Evidence of eye-witness that truck was being driven at excessive speed ignoring curve on road — Also said driver did not follow rules of traffic — Further, driver prosecuted and found guilty in criminal case — Finding of Tribunal holding driver guilty of negligence and no contributory negligence on part of deceased, based on evidence — Confirmed.

I (2007) ACC 249 (Gujarat HC) (DB)

- Negligence — Contributory negligence — Proof — Accident between bus and lorry — Case of head on collision — Tribunal held both drivers equally responsible for accident — Hence present appeal by owner of bus — Argument, bus driver in no way responsible, rejected — In view of position of bus as seen from sketch, conclusion of Tribunal cannot be found fault with — Finding upheld.

I (2007) ACC 76 (Madras HC) (DB)

- Negligence — Rash and negligent driving — Proof — Accident solely due to negligent act of driver in starting bus while claimant was boarding same — Rear wheel of bus ran over her legs and both legs fractured — Evidence shows that claimant not properly boarded bus as she had not completely entered into it and some more passengers were behind her waiting for their turn to board bus, suddenly it started without verifying whether all passengers have entered and it was safe to start bus — Driver supposed to start bus only after door closed and duly fastened — Tribunal rightly fixed negligence on bus driver — Finding upheld.

I (2007) ACC 349 (Andhra Pradesh HC)

- Negligence — Rash and negligent driving — Proof — Accident while deceased was dropping empty gunny bags from roof of vehicle and driver started bus whereby former lost control and fell down on road — Said version of accident not been rebutted by owner and driver — Same deemed to have been admitted — Man will fall down from roof only in case bus started — Proved from evidence on record that accident occurred due to rash and negligent driving of driver of bus.

I (2007) ACC 265 (Jammu & Kashmir HC)

- Negligence — Rash and Negligent driving — Proof — Liability to compensate — Accident between Roadways bus and private vehicle — Driver of latter vehicle not in any way responsible for accident in question — Driver of bus not entered witness box to explain under what circumstances did accident occur — Conductor, who sits on rear seat, cannot be expected to have seen events preceding to accident — His evidence is of no value — Eye-witness account clearly stated rash and negligent driving by driver of bus as cause of accident — Finding of Tribunal holding bus driver rash and negligent upheld — Liability to pay compensation lies on State Road Transport Corporation alone.

I (2007) ACC 300 (Allahabad HC) (DB)

EX PARTE

Motor Vehicles Act, 1939 — Section 110A=Motor Vehicles Act, 1988 — Section 166 — Code of Civil Procedure, 1908 — Order 9 Rule 13 — Accident — Liability of real owner of offending vehicle to compensate — Appeal by owner — Application for setting aside *ex parte* decree — Dismissed — Hence present petition — Petitioner lady — Plea that, she being divorced by husband, was no longer real owner of vehicle in question, accepted — In view of divorce decree, ownership of offending truck transferred to husband — Said decree binding on all parties — Husband being real owner of truck liable to pay compensation, in place of wife who is only recorded owner.

I (2007) ACC 271 (Orissa HC)

EXTRA PREMIUM

Motor Vehicles Act, 1939 — Section 95 — Goods Vehicle — Death of passenger travelling in goods vehicle as owner of goods — Liability of insurer — Deceased and other injured covered under policy — Specific premium paid to cover such risk — Persons not gratuitous — Insurer liable.

I (2007) ACC 290 (Punjab & Haryana HC)

FIRE CLAIMS

Insurance — Fire accident — Loss to insured stock — Cause of fire — Liability of insurer — Denial of — Contention, loss out of purview of perils covered under policy hence claim of plaintiff cannot be considered — No material to ascertain whether fire caused due to electric short circuit or because of pouring kerosene — If fire due to mischievous

or malicious act of some person, same covered by conditions of policy — Insurer liable to pay claim so long as there is no wilful involvement of plaintiff or any of partners of plaintiff — Investigation revealed that there was no such involvement, nor cause of accident could be traced — Further contention that slump in tobacco business of plaintiff and heavy indebtedness of plaintiff resulted in fraudulent accident, not been substantiated — Insurer failed to establish alleged fraud on part of plaintiff so as to disentitle him to claim amount under policy — Surveyor assessed loss — In view of assessment made by Surveyors engaged by insurer, worth of stock arrived at Rs. 96,48,295 — Insurer liable accordingly — Liability upheld.

I (2007) ACC 133 (Andhra Pradesh HC)

— Insurance — Goods insured — Loss due to fire — Assessment of loss by Arbitrators — Rs. 10,64,146 over and above loss assessed by Surveyors found payable — Appeal by insurer — Total insurance cover for goods was Rs. 45,00,000 — In view of sale and purchase during relevant period and closing stock one day before accident, respondent held entitled to said sum — All documents analysed minutely before pronouncing award — Failure to show Arbitrators misconducted or award not in terms with policy — Award upheld — Insurer liable to pay Rs. 10,64,146 besides Rs. 26,60,243 assessed by Surveyors.

I (2007) ACC 226 (Punjab & Haryana HC)

— Insurance — Stock of raw materials insured — Damage due to fire — Failure to prove goods destroyed were covered under policy — Liability of insurer — Goods in fact insured were raw materials which are hypothecated with bank and stored at factory premises — To claim benefit of policy, necessary for plaintiffs to establish above said conditions — Failure to prove that goods gutted in fire were hypothecated with bank — Further, what was gutted in fire was finished goods and not semi-processed or raw material — Plaintiffs not entitled to claim benefit of policy — Insurer not liable.

I (2007) ACC 109 (Bombay HC)

FRAUD

— Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer — Decree obtained by claimants by playing fraud on insurer — Challenge against — Claimants suppressed fact that lorry involved in accident was owned by deceased himself who was driving vehicle at relevant time — Policy covered risk of only third party, risk of owner insured not covered — Claimants falsely alleged that vehicle was owned by one 'M' — Fraud vitiates entire proceedings — In interest of justice award of Tribunal liable to be set aside.

I (2007) ACC 15 (Madras HC)

— Insurance — Fire accident — Loss to insured stock — Cause of fire — Liability of insurer — Denial of — Contention, loss out of purview of perils covered under policy hence claim of plaintiff cannot be considered — No material to ascertain whether fire caused due to electric short circuit or because of pouring kerosene — If fire due to mischievous or malicious act of some person, same covered by conditions of policy — Insurer liable to pay claim so long as there is no wilful involvement of plaintiff or any of partners of plaintiff — Investigation revealed that there was no such involvement, nor cause of accident could be traced — Further contention that slump in tobacco business of plaintiff and heavy indebtedness of plaintiff resulted in fraudulent accident, not been substantiated — Insurer failed to establish alleged fraud on part of plaintiff so as to disentitle him to claim amount under policy — Surveyor assessed loss — In view of assessment made by Surveyors engaged by insurer, worth of stock arrived at Rs. 96,48,295 — Insurer liable accordingly — Liability upheld.

I (2007) ACC 133 (Andhra Pradesh HC)

GOODS VEHICLE

Motor Vehicles Act, 1988 — Section 147(1) — Carrying fare paying passengers — Death of passengers in accident — Deceased cannot be said to be authorised passengers — No passengers, fare paying or gratuitous, allowed to travel in goods carriage — Insurer not liable.

I (2007) ACC 323 (Himachal Pradesh HC)

— Motor Vehicles Act, 1939 — Section 95 — Death of passenger travelling in goods vehicle as owner of goods — Liability of insurer — Deceased and other injured covered under policy — Specific premium paid to cover such risk — Persons not gratuitous — Insurer liable.

I (2007) ACC 290 (Punjab & Haryana HC)

— Motor Vehicles Act, 1988 — Section 147(1) — Gratuitous passenger — Liability of insurer — All victims, injured and deceased, returning home after studies/work — Plea of owner that victims hired as labourers for unloading bricks — Admittedly, no goods in truck at time of accident — Victims gratuitous passengers — Insurer wrongly held liable to pay compensation — Owner liable — Insurer to pay award amount and shall recover same from owner.

I (2007) ACC 323 (Himachal Pradesh HC)

— Motor Vehicles Act, 1988 — Section 147(1) — Motor Accident Claim — Offending vehicle goods vehicle — Liability of insurer towards gratuitous passenger — If goods vehicle carrying gratuitous passenger, meets with accident, insurer cannot be held liable to pay compensation — Amount, if paid to claimants, to be recovered from owner of vehicle.

I (2007) ACC 207 (SC)

GRATUITOUS PASSENGERS

— Motor Vehicles Act, 1988 — Section 147(1) — Goods Carriage — Carrying fare paying passengers — Death of passengers in accident — Deceased cannot be said to be authorised passengers — No passengers, fare paying or gratuitous, allowed to travel in goods carriage — Insurer not liable.

I (2007) ACC 323 (Himachal Pradesh HC)

— Motor Vehicles Act, 1939 — Section 95 — Goods Vehicle — Death of passenger travelling in goods vehicle as owner of goods — Liability of insurer — Deceased and other injured covered under policy — Specific premium paid to cover such risk — Persons not gratuitous — Insurer liable.

I (2007) ACC 290 (Punjab & Haryana HC)

— Motor Vehicles Act, 1988 — Section 147(1) — Goods vehicle — Liability of insurer — All victims, injured and deceased, returning home after studies/work — Plea of owner that victims hired as labourers for unloading bricks — Admittedly, no goods in truck at time of accident — Victims gratuitous passengers — Insurer wrongly held liable to pay compensation — Owner liable — Insurer to pay award amount and shall recover same from owner.

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— Motor Vehicles Act, 1988 — Section 147(1) — Motor Accident Claim — Offending vehicle goods vehicle — Liability of insurer towards gratuitous passenger — If goods vehicle carrying gratuitous passenger, meets with accident, insurer cannot be held liable to pay compensation — Amount, if paid to claimants, to be recovered from owner of vehicle.

I (2007) ACC 207 (SC)

HIRE OR REWARD

Motor Vehicles Act, 1988 — Section 147 — Liability of Insurer towards third parties — Liability denied contending, car used for hire or reward which is not covered by policy — No evidence, oral or documentary, led by insurer to prove contention — Provisions of policy makes clear that insurer is liable to third parties in case of their death or bodily injuries — In present case, as per un rebutted evidence, claimant who was travelling has not either hired or paid any reward — Claimant becomes third party — Insurer liable.

I (2007) ACC 338 (Andhra Pradesh HC)

INCOME

Principles of Assessment — Financial or pecuniary loss to claimant — Determination of — Court must first form opinion as to nature and extent of loss — Court has to decide what claimant would have earned, had accident not happened, allowing for any future increase or decrease in rate of earnings — Further, necessary for Court to decide how long loss will continue, whether there is incapacity for life or for a shorter period.

I (2007) ACC 124 (Madras HC)

INSURANCE POLICY

Construction of — In case of any ambiguity, policy should be construed in favour of insured and not insurer.

I (2007) ACC 47 (SC)

— Insurance — Exclusionary Clauses — Applicability — Burden to prove applicability is on insurer — No such contention raised in written statement — Same was required to be specifically pleaded and proved — In absence of any issue having been raised or any evidence been adduced in this behalf, exclusion clause not applicable.

I (2007) ACC 47 (SC)

— Motor Vehicles Act, 1988 — Sections 149(2)(b) and 149(6) — Making false representation for issuance of policy — Different description of vehicle — Contention of insurer, since owner made false representation of fact namely different description of vehicle hence policy void and insurer not liable to pay compensation — Rejected — Registration number tallied with vehicle of lorry — Burden is on insurer to prove misrepresentation which was proved to be false one in material particulars — Registration mark and number correctly mentioned in relevant column of policy — Hard to believe that regarding make and model alone, misrepresentation was made — Offending vehicle covered by policy — Insurer liable.

I (2007) ACC 174 (Madras HC)

INTEREST

Award of — Rate of — Court below awarded interest @ 12% p.a. from date of fire accident till date of filing of suit and @ 6% p.a. from date of suit till realisation — Having regard to facts and circumstances of case and drastic reduction in rate of interest, appropriate to fix rate of interest @ 9% p.a. although i.e. from date of accident till realisation.

I (2007) ACC 133 (Andhra Pradesh HC)

— Workmen's Compensation Act, 1923 — Section 4A(3)(a) — Interest on Account of Compensation — Insurer's liability to pay — Policy not produced to show that liability for payment of interest on awarded amount excluded by contract of insurance entered into between owner and insurer — Liability not excluded by specific term of contract —

Insurer statutorily liable to pay interest.

I (2007) ACC 171 (Calcutta HC) (DB)

- Motor Vehicles Act, 1988 — Section 171 — Motor Accident Claim — Compensation — Rate of interest — Accident occurred seventeen years ago, in year 1988 — Tribunal awarded compensation with interest @ 12% p.a. — Same maintained by High Court — Having regard to facts and circumstances no interference required — Rate of interest so awarded, upheld.

I (2007) ACC 207 (SC)

JOINT TORT FEASORS

Negligence — Composite negligence — Liability of joint tortfeasors — Apportionment of — Accident between 2 trucks — Drivers of both vehicles liable — Injured not in position to quantify or qualify apportionment of each vehicle — Both motor vehicles jointly and severally liable to pay compensation — Choice of claimant to sue both or claim compensation from one of joint tortfeasors — No apportionment of claim between joint tortfeasors — Compensation amount can be recovered by any of them.

I (2007) ACC 36 (Madhya Pradesh HC)

LAPSED POLICY

Insurance Policy — Lapsed for non-payment of premium — Suit for declaration respecting civil death of insured, having not been heard of by anybody for last 7 years — Entitlement to get benefits of policy — Courts below refused to draw presumption of civil death of insured — Even death certificate not produced by claimants — Further, after 1992, no premium paid — Policy lapsed — Insurer rightly refused to disburse benefits of his insurance policy.

I (2007) ACC 334 (Punjab & Haryana HC)

LIABILITY WITHOUT FAULT

Motor Vehicles Act, 1939 — Section 92A [Section 140, Motor Vehicles Act, 1988] — Compensation towards no-fault liability — Claim under Section 92A could be made even by person, whose own negligent act, neglect or default caused accident — Victim only to show that he suffered death/permanent disability on account of said accident.

I (2007) ACC 91 (Gauhati HC) (DB)

- Motor Vehicles Act, 1988 — Section 140 — Interim Compensation — Award of — No fault liability — Proof of negligence not necessary — Fact that deceased himself caused accident in question by driving rashly and negligently and died due to his own fault, irrelevant while awarding compensation under Section 140 — Proof of negligence of other vehicle is not condition precedent — Claimants entitled to Rs. 50,000 towards no fault liability.

I (2007) ACC 287 (Jharkhand HC) (DB)

LIFE INSURANCE CLAIM

Insurance Policy — Lapsed for non-payment of premium — Suit for declaration respecting civil death of insured, having not been heard of by anybody for last 7 years — Entitlement to get benefits of policy — Courts below refused to draw presumption of civil death of insured — Even death certificate not produced by claimants — Further, after 1992, no premium paid — Policy lapsed — Insurer rightly refused to disburse benefits of his insurance policy.

I (2007) ACC 334 (Punjab & Haryana HC)

LIMITED LIABILITY

Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Categorical statement on oath that liability of company limited to Rs. 15,000 only — Same in concurrence with pleadings of written statements that liability will be subject to provisions of Act of 1939 and terms of policy — Premium for limited liability of Rs. 15,000 was Rs. 12 per passenger — Premium paid accordingly — Liability of insurer limited to Rs. 15,000 — Rule of pay and recover applicable — Insurer to pay entire amount of compensation with interest @ 12% p.a. — Allowed to recover excess amount in execution from owner and driver.

I (2007) ACC 66 (Delhi HC)

— Motor Vehicles Act, 1939 — Section 95(2) [Section 147(2) of Motor Vehicles Act, 1988] — Liability of Insurer — Limits of — Comprehensive policy — Death of 2 persons out of use of vehicle in question — Liability of insurer fixed at Rs. 50,000, rest of amount held payable by owner — Hence appeal — Contention of owner, since nature of policy comprehensive, Tribunal erred in not fastening entire liability upon insurer — Rejected — Merely because policy comprehensive, insurer did not automatically acquire unlimited liability for third party risks — Policy comprehensively covered damage to vehicle and not to third party risks — Order upheld.

I (2007) ACC 27 (Patna HC) (DB)

— Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Rule of pay and recover — Applicability — Vehicle in question being goods vehicle, liability of insurer limited to Rs. 50,000 — Insurer cannot be saddled with liability to pay whole amount — However, it has to satisfy decree at first instance and recover awarded amount over and above excess statutorily liability from owner and driver.

I (2007) ACC 193 (Rajasthan HC)

— Motor Vehicles Act, 1988 — Section 147(2) Proviso — Motor Accident Claim — Liability of insurer — Limits of — Accident occurred on 29.9.1989, *i.e.*, within period of 4 months of coming into force Act of 1988 — In accordance with proviso to Section 147(2), policy issued under old Act continues to be effective — As per terms of policy, liability of insurer limited to Rs. 1,50,000 — Liability not unlimited — Impugned order set aside — Insurer entitled to recover amount in excess of Rs. 1,50,000 from owner of vehicle.

I (2007) ACC 219 (SC)

MAINTAINABILITY

Motor Vehicles Act, 1988 — Sections 163A and 166 — Claim Petition — Not maintainable under Section 166 — Conversion of petition to Section 163A — Legality — No negligence on part of bus driver in causing accident — Claim petition under Section 166 cannot be maintained — Tribunal converted same into one under Section 163A and awarded compensation under no fault liability — Unjustified — Annual income of deceased more than Rs. 40,000, hence claimants could not have invoked provisions of Section 163A — Tribunal erred in awarding compensation under Section 163A, while rejecting their petition under Section 166 of Act.

I (2007) ACC 244 (Himachal Pradesh HC)

— Limitation — Maintainability of suit — Insurance claim — Claim lodged on 11.8.1988 — Insurer *vide* its letter dated 2.9.1988 stated that claim would be settled strictly in terms of policy — No repudiation at that stage — Actual repudiation made on 1.4.1991 — Suit filed on 7.8.1992 — Limitation period being 3 years, suit not barred, maintainable — Limitation Act, 1963 — Article 44 of Schedule.

I (2007) ACC 47 (SC)

MARINE CLAIM

Insurance — Marine Insurance Policy — Goods in transit covered — Constructive total loss — Ship did not proceed due to its unseaworthiness — Vessel stranded — Contract of insurance expressly included risk of non-delivery of even single part of consignment — Further endorsements made in policy, by paying additional premium, in terms whereof risk of non-delivery specifically covered — Where insurer takes additional premium and insures higher risk, no restrictive meaning thereto need be given — Policy included risk of vessel or craft being stranded or grounded — Unseaworthiness of vessel due to which it became stranded, comes within meaning of expression 'peril insured against' — After ship became unseaworthy, insured took steps to recover value of cargo to minimize its loss due to non-delivery — It, therefore, fulfilled its contractual obligation — O.P. liable — Sale proceeds of consignment to be credited in complainant's account — Balance amount payable by insurer — Marine Insurance Act, 1963 — Sections 60, 78(4).

I (2007) ACC 47 (SC)

— Limitation — Maintainability of suit — Insurance claim — Claim lodged on 11.8.1988 — Insurer *vide* its letter dated 2.9.1988 stated that claim would be settled strictly in terms of policy — No repudiation at that stage — Actual repudiation made on 1.4.1991 — Suit filed on 7.8.1992 — Limitation period being 3 years, suit not barred, maintainable — Limitation Act, 1963 — Article 44 of Schedule.

I (2007) ACC 47 (SC)

MINIMUM WAGES

Quantum — Fatal — 33-34 years — Enhancement — Deceased ladies, working as labourer in fields — Tribunal assessed loss to family at Rs. 400 p.m., applied multiplier of 16 and awarded Rs. 78,000 only — Award on lower side — Even if claimants failed to prove that deceased worked with somebody as labourer, her income should have been assessed in accordance with minimum wages being paid to labourer — At relevant time, such wages being Rs. 30 per day, salary can be presumed at Rs. 900 p.m. — Multiplier of 17 proper — Rs. 1,200 to be awarded as funeral expenses — Claimants entitled to Rs. 1,44,000 along with interest @ 10% p.a.

I (2007) ACC 178 (Punjab & Haryana HC)

MISREPRESENTATION

Motor Vehicles Act, 1988 — Sections 149(2)(b) and 149(6) — Making false representation for issuance of policy — Different description of vehicle — Contention of insurer, since owner made false representation of fact namely different description of vehicle hence policy void and insurer not liable to pay compensation — Rejected — Registration number tallied with vehicle of lorry — Burden is on insurer to prove misrepresentation which was proved to be false one in material particulars — Registration mark and number correctly mentioned in relevant column of policy — Hard to believe that regarding make and model alone, misrepresentation was made — Offending vehicle covered by policy — Insurer liable.

I (2007) ACC 174 (Madras HC)

MOTOR OWN DAMAGE CLAIM

— Accident — Vehicle damaged — Proof of damages — Delayed presentation of claim by about 6 years — True that Act does not prescribe any limitation for presentation of claim — However, claimant under obligation to state reasons for such delay — Though delay does not affect maintainability of claim as such, corresponding burden or obligation on

part of claimant to prove occurrence of accident and liability for same, increases — Said obligation, not discharged to extent it is required under law — Regarding extent of damages, though certain bills filed, same not proved — Claim not maintainable.

I (2007) ACC 278 (Andhra Pradesh HC)

MULTIPLIER

Compensation — Principles of Assessment — Choice of multiplier — Claimants: parents — Age of deceased not relevant — Age of claimants determines multiplier to be adopted.

I (2007) ACC 10 (SC)

— Principles of Assessment — Choice of multiplier — Determined by age of deceased or that of claimants whichever higher.

I (2007) ACC 1 (Madras HC)

— Principles of Assessment — Choice of multiplier — In case of death of unmarried children, age of parents, not age of deceased, is relevant for fixing appropriate multiplier.

I (2007) ACC 330 (Andhra Pradesh HC)

— Principles of Assessment — Choice of multiplier — Provisions contained in Second Schedule generally taken as guide — But cases may arise having special features or facts, thereby calling for deviation from multiplier usually applicable.

I (2007) ACC 87 (Uttaranchal HC) (DB)

— Principles of Assessment — Compensation — Choice of multiplier — Deceased 30 years old — Tribunal applied multiplier of 17 — In view of age of deceased, any multiplier around 15 would have been sufficient — Multiplier of 17 not on lower side — No enhancement.

I (2007) ACC 44 (Uttaranchal HC) (DB)

— Quantum — Fatal — Enhancement — Choice of multiplier — Deceased unmarried — In such cases, average age of claimants to be reckoned for purpose of arriving at computation of loss of earnings — Proper multiplier is 6.31, appropriate to age of mother of deceased and not 8 as adopted by Tribunal — Net pay of deceased Rs. 7,545 p.m. — Contribution to claimants Rs. 5,000 p.m. — Loss of estate Rs. 20,000 — Claimants entitled to Rs. 4,00,000 in place of Rs. 3,90,000 with interest @ 6.5% p.a. on enhanced sum.

I (2007) ACC 79 (Andhra Pradesh HC)

NEGLIGENCE

Accident — Arising out of “use of vehicle” — Proof — Dismissal of claim petition — Legality — Death while deceased was repairing vehicle, which was not in motion — Deceased driver of vehicle — While tractor was standing and trolley put on jack and he was repairing bearing of trolley at that time, jack slipped out and trolley fell upon deceased — Clear from facts of case that after investigation, police found that deceased himself was guilty — Claim petition rightly dismissed.

I (2007) ACC 188 (Rajasthan HC)

— Accident — Negligence of driver of one vehicle — Insurance Companies of both vehicles held liable — Hence appeal — Accident between tempo and tractor trailer — As per documentary evidence and judgment of criminal Court, clear that trailer collided with tempo — Driver of tractor accepted his guilt — If trailer was responsible for accident, apparently, reason for accident cannot be thrown on tempo — Negligence in instant case is only of tractor driver — Finding of Tribunal that both drivers equally responsible, not

supported by materials on record — Insurer of tractor alone liable to compensate claimants — Insurer of tempo i.e. present appellant not liable.

I (2007) ACC 160 (Madras HC)

- Motor Vehicles Act, 1939 — Section 110D=Motor Vehicles Act, 1988 — Section 173 — Appeal by Owner — Challenge against liability — Driver of vehicle in question held negligent in causing accident — Plea of appellant, deceased himself negligent, not acceptable — Lodging of FIR against driver, his handing over to custody of police soon after accident, coupled with testimony of eye-witness lead to inference that driver alone was responsible for accident — No evidence from owner's side — Finding of Tribunal upheld — Owner, driver jointly and severally liable.

I (2007) ACC 253 (Uttaranchal HC)

- Ascertainment — Accident between van and lorry — Negligence of lorry driver alleged — Same cannot be judged merely on ground that he was charge-sheeted — Negligence has to be proved by positive evidence.

I (2007) ACC 330 (Andhra Pradesh HC)

- Rash and negligent driving — Proof — Accident solely due to negligent act of driver in starting bus while claimant was boarding same — Rear wheel of bus ran over her legs and both legs fractured — Evidence shows that claimant not properly boarded bus as she had not completely entered into it and some more passengers were behind her waiting for their turn to board bus, suddenly it started without verifying whether all passengers have entered and it was safe to start bus — Driver supposed to start bus only after door closed and duly fastened — Tribunal rightly fixed negligence on bus driver — Finding upheld.

I (2007) ACC 349 (Andhra Pradesh HC)

- Rash and negligent driving — Proof — Accident while deceased was dropping empty gunny bags from roof of vehicle and driver started bus whereby former lost control and fell down on road — Said version of accident not been rebutted by owner and driver — Same deemed to have been admitted — Man will fell down from roof only in case bus started — Proved from evidence on record that accident occurred due to rash and negligent driving of driver of bus.

I (2007) ACC 265 (Jammu & Kashmir HC)

- Rash and Negligent driving — Proof — Liability to compensate — Accident between Roadways bus and private vehicle — Driver of latter vehicle not in any way responsible for accident in question — Driver of bus not entered witness box to explain under what circumstances did accident occur — Conductor, who sits on rear seat, cannot be expected to have seen events preceding to accident — His evidence is of no value — Eye-witness account clearly stated rash and negligent driving by driver of bus as cause of accident — Finding of Tribunal holding bus driver rash and negligent upheld — Liability to pay compensation lies on State Road Transport Corporation alone.

I (2007) ACC 300 (Allahabad HC) (DB)

NEGLIGENCE (COMPOSITE)

Liability of joint tortfeasors — Apportionment of — Accident between 2 trucks — Drivers of both vehicles liable — Injured not in position to quantify or qualify apportionment of each vehicle — Both motor vehicles jointly and severally liable to pay compensation — Choice of claimant to sue both or claim compensation from one of joint tortfeasors — No apportionment of claim between joint tortfeasors — Compensation amount can be recovered by any of them.

I (2007) ACC 36 (Madhya Pradesh HC)

NEGLIGENCE CONTRIBUTORY

Alleged, but not proved — Truck coming from opposite direction, hit claimant on motorcycle — Evidence of eye-witness that truck was being driven at excessive speed ignoring curve on road — Also said driver did not follow rules of traffic — Further, driver prosecuted and found guilty in criminal case — Finding of Tribunal holding driver guilty of negligence and no contributory negligence on part of deceased, based on evidence — Confirmed.

I (2007) ACC 249 (Gujarat HC) (DB)

— Apportionment of liability — Legality of — Tanker parked negligently, in middle of road — No red signal given to indicate parking — Van dashed with tanker from behind — Drivers of both vehicles liable — Liability contributory — Tribunal rightly apportioned liability between parties as 50-50 — No case made out for reversal.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

— Deceased held guilty upto 50% — Challenge against — Appeal by claimants — Tribunal given positive finding that accident occurred due to rash and negligent act of truck driver as he had hit window of bus from behind and dragged it to considerable distance — In such situation, hardly any negligence can be attributed to deceased — No evidence that deceased tried to board running bus — Even if same assumed, in that event also, negligence would be attributed to conductor or driver of bus who failed to perform their duty in getting windows shut before starting bus — No negligence can be attributed to deceased — Claimants entitled to whole of compensation amount.

I (2007) ACC 274 (Punjab & Haryana HC)

— Extent of — Claimant held himself liable upto 2/3rd — Challenge against — Absence of evidence to establish contributory negligence more on part of particular party — Just and proper to hold each party negligent — As such amount of compensation of Rs. 70,400 should not have been reduced by 2/3rd — Instead, it should have been reduced by half — Rs. 35,200 payable.

I (2007) ACC 262 (Uttaranchal HC)

— Person suffered fatal injuries while attempting to board running bus — Himself negligent in causing accident — However, entire negligence cannot be attributed to deceased — Driver and conductor, if were more cautious, accident could have been averted — Negligence of deceased and driver can be apportioned at 30 : 70 percent — Accordingly claimants entitled to 70% of compensation amount.

I (2007) ACC 280 (Punjab & Haryana HC)

— Plea can be raised only where both parties, in some respects, negligent — In case of unambiguous and clear finding that deceased was hit by jeep from behind, no question of contributory negligence on part of deceased arises — Things being obvious, apparent and self-speaking, there was not even need to consider such plea — *Maxim res ipsa loquitur* applicable — Accident wholly due to rash and negligent driving of jeep.

I (2007) ACC 209 (Andhra Pradesh H (DB)

— Proof — Accident between bus and lorry — Case of head on collision — Tribunal held both drivers equally responsible for accident — Hence present appeal by owner of bus — Argument, bus driver in no way responsible, rejected — In view of position of bus as seen from sketch, conclusion of Tribunal cannot be found fault with — Finding upheld.

I (2007) ACC 76 (Madras HC) (DB)

- Proof — Case of head-on collision between 2 vehicles — Usually occurs when drivers of both vehicles negligent — Even if one of drivers little careful, there is possibility to avert accident — Eye-witness account that accident due to negligence of both drivers — Road on scene of accident *vide* road — Lorry coming from opposite direction was seen when it was 40 to 60 ft away — Had deceased, being driver of other vehicle, been cautious and careful, accident could have been averted — Contributory negligence of both drivers proved.

I (2007) ACC 330 (Andhra Pradesh HC)

- Proof — Deduction of 20% from compensation — Legality — Offending truck hit deceased from behind — Established that truck was being driven rashly and negligently — Accident entirely due to negligence of truck driver — No negligence of deceased evident, even by site plan — Conclusion of Tribunal that deceased contributed to accident, entirely arbitrary and not supported by any evidence — Deduction of 20% from dependency amount, illegal — Claimants entitled to full amount of compensation as determined by Tribunal.

I (2007) ACC 335 (Rajasthan HC)

- Rash and negligent driving — Accident between scooter and bus — Not case of head-on collision — As per statement of bus driver, scooterist dashed bus on right side of bus — It shows latter was driving his vehicle on his left side — No contributory negligence can be attributed on scooterist — In view of evidence of eye-witness, bus driver rash and negligent — Hence liable.

I (2007) ACC 44 (Uttaranchal HC) (DB)

- Travelling on roof top of bus — Accident — Death of passenger — Not *per se* constitutes negligence on part of passenger — No evidence that driver made effort to prevent deceased from boarding roof and travelling in that position — Circumstances show that in fact he allowed it — Hence, deceased not contributed to accident — Heirs entitled to claim compensation.

I (2007) ACC 168 (Jammu & Kashmir HC)

NEXUS BETWEEN DEATH AND ACCIDENT

Accident — Injuries sustained — Death of victim — Proof of death being result of injuries sustained in accident arising out of use of motor vehicle — Medical evidence that deceased died due to myocardial infarction leading to cardio respiratory failure — No proof that victim suffered any injury by sudden application of brakes of vehicle — No evidence that there was any external or internal injury or that heart attack caused because of sudden application of brakes — No nexus between alleged injuries and death — No claim entitled.

I (2007) ACC 244 (Himachal Pradesh HC)

NON-DELIVERY

Insurance — Marine Insurance Policy — Goods in transit covered — Constructive total loss — Ship did not proceed due to its unseaworthiness — Vessel stranded — Contract of insurance expressly included risk of non-delivery of even single part of consignment — Further endorsements made in policy, by paying additional premium, in terms whereof risk of non-delivery specifically covered — Where insurer takes additional premium and insures higher risk, no restrictive meaning thereto need be given — Policy included risk of vessel or craft being stranded or grounded — Unseaworthiness of vessel due to which it became stranded, comes within meaning of expression 'peril insured against' — After ship became unseaworthy, insured took steps to recover value of cargo to minimize its loss due to non-delivery — It, therefore, fulfilled its contractual obligation — O.P. liable

— Sale proceeds of consignment to be credited in complainant's account — Balance amount payable by insurer — Marine Insurance Act, 1963 — Sections 60, 78(4).

I (2007) ACC 47 (SC)

OVERLOADING

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy — Burden to prove — On insurer — Liability — Issue of driving licence of driver of offending bus, being fake, raised by insurer — No evidence led in support — Bus driver produced copy of licence before Tribunal — Same found valid and genuine — Insurer utterly failed to establish flouting of terms and conditions of policy — Further plea that at relevant time bus overloaded — Tribunal held that accident occurred due to rash and negligent driving and not due to overloading — Bus comprehensively insured for third party insurance — Insurer bound to pay compensation to passengers travelling in said bus.

I (2007) ACC 184 (Uttaranchal HC)

OWNER

Motor Vehicles Act, 1939 — Section 110A=Motor Vehicles Act, 1988 — Section 166 — Code of Civil Procedure, 1908 — Order 9 Rule 13 — Accident — Liability of real owner of offending vehicle to compensate — Appeal by owner — Application for setting aside *ex parte* decree — Dismissed — Hence present petition — Petitioner lady — Plea that, she being divorced by husband, was no longer real owner of vehicle in question, accepted — In view of divorce decree, ownership of offending truck transferred to husband — Said decree binding on all parties — Husband being real owner of truck liable to pay compensation, in place of wife who is only recorded owner.

I (2007) ACC 271 (Orissa HC)

PASSENGERS

Accident — Offending vehicle bus — Passengers suffered injuries — Claimant one such passenger — Leg fractured — Rs. 60,000 awarded — Hence, appeal by vehicle owner — Contention, non-production of ticket shows claimant not to be *bona fide* passenger, hence compensation not payable — Not disputed that in accident, several passengers including claimant sustained injuries — Claimant admitted to hospital soon after accident — Same shows that claimant sustained injuries while travelling in that bus — Nothing on record to controvert claim of claimant — Compensation rightly awarded.

I (2007) ACC 303 (Allahabad HC)

PAY AND RECOVER

Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Categorical statement on oath that liability of company limited to Rs. 15,000 only — Same in concurrence with pleadings of written statements that liability will be subject to provisions of Act of 1939 and terms of policy — Premium for limited liability of Rs. 15,000 was Rs. 12 per passenger — Premium paid accordingly — Liability of insurer limited to Rs. 15,000 — Rule of pay and recover applicable — Insurer to pay entire amount of compensation with interest @ 12% p.a. — Allowed to recover excess amount in execution from owner and driver.

I (2007) ACC 66 (Delhi HC)

— Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Rule of pay and recover — Applicability — Vehicle in question being goods vehicle, liability of insurer limited to Rs. 50,000 — Insurer cannot be saddled with liability to pay whole amount — However, it has to satisfy decree at first instance and recover awarded amount over and above excess statutorily liability from owner and driver.

I (2007) ACC 193 (Rajasthan HC)

- Motor Vehicles Act, 1988 — Section 147 — Policy of Insurance — Cancellation due to dishonour of cheque towards premium — Liability of insurer — Liability statutory — Insurer liable to pay — However, Tribunal granted right of recovery to insurer — Rights of insurer already been protected — No merit in appeal of insurer.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

PERIL INSURED

Insurance — Fire accident — Loss to insured stock — Cause of fire — Liability of insurer — Denial of — Contention, loss out of purview of perils covered under policy hence claim of plaintiff cannot be considered — No material to ascertain whether fire caused due to electric short circuit or because of pouring kerosene — If fire due to mischievous or malicious act of some person, same covered by conditions of policy — Insurer liable to pay claim so long as there is no wilful involvement of plaintiff or any of partners of plaintiff — Investigation revealed that there was no such involvement, nor cause of accident could be traced — Further contention that slump in tobacco business of plaintiff and heavy indebtedness of plaintiff resulted in fraudulent accident, not been substantiated — Insurer failed to establish alleged fraud on part of plaintiff so as to disentitle him to claim amount under policy — Surveyor assessed loss — In view of assessment made by Surveyors engaged by insurer, worth of stock arrived at Rs. 96,48,295 — Insurer liable accordingly — Liability upheld.

I (2007) ACC 133 (Andhra Pradesh HC)

PERMIT

Motor Vehicles Act, 1988 — Sections 67, 72 and 217 — Motor Vehicles Act, 1939 — Section 43(1)(i) — Stage Carriage Permit — Petitioners stage carriage operators — Government order directed them to provide concessions to physically handicapped persons — Validity — Said order issued in exercise of power conferred under Section 43 (1)(i) of 1939 Act — Section 67 of new Act corresponds to Section 43 of old Act — Notification issued under Section 43(1) stands saved by Section 217 of New Act — Nothing in notification which is inconsistent to provisions of 1988 Act — It shall be deemed to have been issued under Section 67 of new Act — Validity of order upheld.

I (2007) ACC 121 (Kerala HC)

PLEADINGS

Insurance — Exclusionary Clauses — Applicability — Burden to prove applicability is on insurer — No such contention raised in written statement — Same was required to be specifically pleaded and proved — In absence of any issue having been raised or any evidence been adduced in this behalf, exclusion clause not applicable.

I (2007) ACC 47 (SC)

- Raising of plea for first time during arguments — Sustainability — Validity/invalidity of driving licence — Plea that licence not valid for driving tractor trailer raised by insurer, for first time, during arguments — Neither pleading nor evidence in this regard — Plea of insurer not legally sustainable — Insurer liable.

I (2007) ACC 196 (Gujarat HC)

POWERS OF TRIBUNAL

- Motor Vehicles Act, 1988 — Section 166 — Claim petition — Dismissal for mere default in appearance of claimant — Legality — No provision in Act and/or Rules permitting or empowering Tribunal to dismiss petition for default — Same can be done if claimant

completely failed to prove his claim by failing to appear, take requisite steps and/or adduce evidence — In instant case, claim petition dismissed on mere ground of default — No ground for dismissal — Impugned order of Tribunal not legally sustainable — Set aside.

I (2007) ACC 34 (Gauhati HC)

- Compensation — Award in excess of claimed amount — Legality — Claimants restricted their claim to Rs. 8,00,000 — Evidence on record warrants quantification of compensation payable at Rs. 14,00,068 — Court not barred to award this latter amount.

I (2007) ACC 1 (Madras HC)

- Motor Vehicles Act, 1988 — Section 169 — Power and procedure of Claims Tribunal — Review of order — Jurisdiction to recall order — Tribunal missed to take note of earlier order passed by this Court, thereby erroneously passed order — Same amounts to passing of order under mistake — Tribunal has inherent jurisdiction to recall its own order when obviously made under mistake.

I (2007) ACC 314 (Karnataka HC)

PRACTICE AND PROCEDURE

Apportionment of liability — Motor Accident Claim — Procedure for avoiding second litigation by deciding rights and liabilities as amongst plaintiffs and defendants as well as amongst defendants themselves *inter se* in same trial, known as inter-pleader, unknown to CPC — MACT can only apportion liability amongst defendants but not say that one defendant will pay another this sum, on basis of liability determined as between two defendants.

I (2007) ACC 157 (Allahabad HC)

PRINCIPLES OF ASSESSMENT

Financial or pecuniary loss to claimant — Determination of — Court must first form opinion as to nature and extent of loss — Court has to decide what claimant would have earned, had accident not happened, allowing for any future increase or decrease in rate of earnings — Further, necessary for Court to decide how long loss will continue, whether there is incapacity for life or for a shorter period.

I (2007) ACC 124 (Madras HC)

PROOF

Accident — Offending vehicle bus — Passengers suffered injuries — Claimant one such passenger — Leg fractured — Rs. 60,000 awarded — Hence, appeal by vehicle owner — Contentions, non-production of ticket shows claimant not to be *bona fide* passenger, hence compensation not payable — Not disputed that in accident, several passengers including claimant sustained injuries — Claimant admitted to hospital soon after accident — Same shows that claimant sustained injuries while travelling in that bus — Nothing on record to controvert claim of claimant — Compensation rightly awarded.

I (2007) ACC 303 (Allahabad HC)

PROPERTY DAMAGE

Motor Vehicles Act, 1988 — Sections 165 and 166 — Damage to property of third party — Entitlement to claim compensation — Liability of Insurance Company — Claim settled with insurer of damaged vehicle — Claimant not entitled to claim damages from insurer of vehicle responsible for accident — Van of claimant damaged due to negligence of lorry driver — Since van covered under comprehensive policy, claim of claimant for repairs was settled with its insurer — In view of this settlement, claimant cannot claim damages

towards same, from insurer of lorry — Both contracts of insurance are for different purpose and operate in different fields — However, claimant entitled to claim Rs. 6,000 from insurer of lorry as general damages.

I (2007) ACC 308 (Andhra Pradesh HC)

PROPERTY INSURED

Insurance — Stock of raw materials insured — Damage due to fire — Failure to prove goods destroyed were covered under policy — Liability of insurer — Goods in fact insured were raw materials which are hypothecated with bank and stored at factory premises — To claim benefit of policy, necessary for plaintiffs to establish above said conditions — Failure to prove that goods gutted in fire were hypothecated with bank — Further, what was gutted in fire was finished goods and not semi-processed or raw material — Plaintiffs not entitled to claim benefit of policy — Insurer not liable.

I (2007) ACC 109 (Bombay HC)

PUBLIC DOCUMENT

Evidence — Documentary evidence — Proof of contents — Unless sufficient opportunity afforded to person affected by particular document, for rebuttal, which is not public document, same may not be taken as strict proof of its contents.

I (2007) ACC 221 (Uttaranchal HC)

QUANTUM FATAL

Appeal for enhancement — Not fit case — Deceased posted as Research Associate — Earning Rs. 1,600 p.m. — Tribunal taking into consideration future prospects of deceased, assessed salary at Rs. 3,000 p.m. — Applied multiplier of 9 and awarded Rs. 2,41,800 — Contention, multiplier of 17 should have been adopted, rejected — Since income assessed on higher side, application of multiplier proper for age group to which deceased belonged — Award upheld.

I (2007) ACC 239 (Rajasthan HC)

— Enhancement — Choice of multiplier — Deceased unmarried — In such cases, average age of claimants to be reckoned for purpose of arriving at computation of loss of earnings — Proper multiplier is 6.31, appropriate to age of mother of deceased and not 8 as adopted by Tribunal — Net pay of deceased Rs. 7,545 p.m. — Contribution to claimants Rs. 5,000 p.m. — Loss of estate Rs. 20,000 — Claimants entitled to Rs. 4,00,000 in place of Rs. 3,90,000 with interest @ 6.5% p.a. on enhanced sum.

I (2007) ACC 79 (Andhra Pradesh HC)

— Reduction — Deduction towards personal expenditure — Deviation from 1/3rd rule — Tribunal erred in deducting 1/4th sum out of total compensation amount — It should have deducted 1/3rd — Award amount reduced accordingly.

I (2007) ACC 168 (Jammu & Kashmir HC)

QUANTUM FATAL 24 YEARS

Enhancement — Claim petition by parents — Age of claimants at relevant time, 60 and 55 years respectively — Deceased coolie, earning about Rs. 40 per day — Contribution towards claimants can be taken as Rs. 700 p.m. — Multiplier of 10 proper — Pecuniary damages Rs. 84,000, Rs. 16,000 non-pecuniary damages — Claimants entitled to 50% of assessed amount on account of contributory negligence of deceased — Entitled to Rs. 50,000 with interest @ 12% p.a. — Interest @ 9% on enhanced sum.

I (2007) ACC 330 (Andhra Pradesh HC)

QUANTUM FATAL 25 YEARS

Enhancement — Towards assessment of income and multiplier — Tribunal took monthly income of deceased as Rs. 2,000, multiplier of 15 and awarded Rs. 2,55,500 — Compensation on lower side — Salary certificate, mentioning income as Rs. 4,000 p.m., proved by claimants — Rs. 3,500 monthly dependency figure — Multiplier of 17 — Rs. 7,14,000 comes to loss of dependency — Rs. 12,500 towards conventional heads — Claimants entitled to enhanced compensation of Rs. 7,26,500 with interest @ 6% p.a.

I (2007) ACC 236 (Madhya Pradesh HC) (DB)

QUANTUM FATAL 26 YEARS

Deceased helping his father in cultivation of land — Can be said to be labourer — Income can be taken Rs. 60 per day for 25 days — Deducting 1/3rd, dependency comes to Rs. 1,000 p.m. — In view of age of deceased and claimants, multiplier of 16 suitable — Claimants entitled to Rs. 1,92,000, with interest @ 9% p.a.

I (2007) ACC 265 (Jammu & Kashmir HC)

QUANTUM FATAL 30 YEARS

Claimant widow and minor daughter aged 27 and 2 years respectively — Deceased qualified Automobile Engineer — Salary certificate to show monthly salary of Rs. 6,366 — Having regard to future prospects of advancements in life and career, it would not be inappropriate in making higher estimate of Rs. 10,000 as gross income — Deducting 1/3rd towards personal living expenses, loss of dependency Rs. 6,667 p.m. — Appropriate multiplier is 17 in view of age of claimant being 27 years — Loss of dependency Rs. 13,60,068 — Adding sum towards loss of consortium and loss of love and affection, etc. total compensation payable comes to Rs. 14,00,068 — Same payable with interest @ 7.5% p.a.

I (2007) ACC 1 (Madras HC)

QUANTUM FATAL 31 YEARS

Compensation — Quantum — Fatal — 31 years — Deceased daughter — Drawing monthly salary of Rs. 6,500 — Claimant mother — Deceased only daughter of her parents, not staying with them — No material to show that she contributed anything to household expenses — Tribunal awarded Rs. 12,00,000 with interest @ 15% p.a. — Multiplier of 17 applied on basis of age of deceased — Unjustified — Interest rate also on higher side — Multiplier to be adopted in consideration of age of claimant — Taking into account age of claimant and monthly income of deceased, total sum of Rs. 5,00,000 payable — Said amount includes other relevant factors like loss of love and affection, mental shock etc. — Interest fixed @ 7.5% p.a.

I (2007) ACC 10 (SC)

QUANTUM FATAL 32 YEARS

Appeal for enhancement — No justification — Deceased earned Rs. 900 from factory and Rs. 400 from agriculture — Future prospects towards income taken into consideration — Salary assessed as Rs. 1,950 p.m. — Multiplier of 10 adopted — Adoption of said multiplier proper, since future prospects of deceased were considered — Rs. 10,000 awarded towards loss of love and affection — No justification to add amount towards loss of consortium — Award of Rs. 1,66,000 upheld.

I (2007) ACC 335 (Rajasthan HC)

QUANTUM FATAL 33-34 YEARS

Enhancement — Deceased ladies, working as labourer in fields — Tribunal assessed loss

to family at Rs. 400 p.m., applied multiplier of 16 and awarded Rs. 78,000 only — Award on lower side — Even if claimants failed to prove that deceased worked with somebody as labourer, her income should have been assessed in accordance with minimum wages being paid to labourer — At relevant time, such wages being Rs. 30 per day, salary can be presumed at Rs. 900 p.m. — Multiplier of 17 proper — Rs. 1,200 to be awarded as funeral expenses — Claimants entitled to Rs. 1,44,000 along with interest @ 10% p.a.

I (2007) ACC 178 (Punjab & Haryana HC)

QUANTUM FATAL 40-45 YEARS

Appeal for Enhancement — Tribunal rightly assessed income of deceased as Rs. 6,000 p.m. — Multiplier of 15 rightly applied — Compensation rightly assessed — No scope for enhancement.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

QUANTUM FATAL 43 YEARS

Cross-appeals for enhancement and reduction of compensation — Deceased eye-surgeon, had bright chances of promotion and higher pay scales in future — At time of death, salary in old scale, Rs. 9,776 — As per revised pay scale, salary Rs. 12,593 — Tribunal adopted principles as laid down in *Susamma Thomas* case and worked out compensation — Multiplier of 10 adopted — 1/3rd amount towards personal expenses not deducted — If revised pay scale and multiplier of 12 adopted, as per structured formula, amount will almost remain same — Award of Rs. 15,92,000 upheld — Keeping in view bank rate of interest, same reduced from 9% to 7.5% p.a.

I (2007) ACC 209 (Andhra Pradesh H (DB)

QUANTUM FATAL 55 YEARS

Appeal for enhancement — Loss of dependency — Claimant sole survivor — Principle of 1/3rd dependency not applicable, dependency will be 50% of income — Deceased earning Rs. 9,138 p.m. — Yearly dependency Rs. 54,828 — Multiplier of 8 applicable — For first 5 years, claimant entitled to compensation on said dependency *i.e.*, Rs. 2,74,140 — For remaining 3 years, compensation depends on pension of deceased — Taking pension as 50% of basic salary and deducting 50% towards personal expenses, compensation comes to Rs. 62,100 — Total Rs. 3,36,240 payable — Tribunal awarded much higher compensation — No scope for enhancement.

I (2007) ACC 22 (Madhya Pradesh HC) (DB)

QUANTUM PERSONAL INJURY

27 years — Enhancement — Fracture in right leg, besides several other injuries — Leg amputated — Treatment received for other injuries — Disability assessed at 75% — Tribunal awarded Rs. 1,00,000 with interest @ 12% p.a. — Tribunal ought to have considered claim by victim for disability of 75% — In instant case, for age group of victim, proper multiplier would be 17 — Victim coolie, income taken as Rs. 1,500 p.m. — Deducting 1/3rd personal expenses, compensation payable comes to Rs. 2,04,000 — Compensation towards pain and sufferings, as awarded by Tribunal — In other aspects, quantum of compensation awarded by Tribunal confirmed except applying multiplier method — Interest @ 7.5% on enhanced amount.

I (2007) ACC 124 (Madras HC)

— Appeal by insurer challenging quantum — Contention, Tribunal awarded more amount than claimed under head of medical and treatment expenses — Tribunal awarded Rs. 60,000 towards permanent disfigurement, nerve damage — Rs. 10,000 towards simple injuries — Rs. 20,000 towards medical expenses — Under said last head, Tribunal

awarded only Rs. 20,000 against claim of Rs. 25,000 — Contention of insurer not tenable — Award upheld.

I (2007) ACC 338 (Andhra Pradesh HC)

- Both legs fractured besides other simple injuries — Hospitalization for 11 days — Victim cannot walk without aid of crutches — Disability 65% — Claimant aged 30 years, Coolie, earning Rs. 30 per day — Tribunal awarded Rs. 1,25,000 towards permanent disability — Such amount equals amount towards loss of earning — Assessment of Tribunal correct — Adding amount under other heads, claimants entitled to Rs. 2,00,000 — Award upheld.

I (2007) ACC 349 (Andhra Pradesh HC)

- Brain injured, some part of it found paralytic — Enhancement — Serious injuries suffered — Hospitalisation for 50-60 days — Physical condition of claimant quite serious — Victim thoroughly dependant on others for rest of his life — Rightly said by Tribunal that he was “dead wood” for whole life — Under such circumstances, Court can enhance compensation — Appropriate enhancement called for under certain heads to extent of Rs. 50,000 (pain and sufferings), Rs. 30,000 (loss of future prospects and future medical expenses) and Rs. 5,000 (each for attendant and transportation charges) — Award modified — Claimant entitled to Rs. 4 lakh in place of Rs. 3,09,700 with interest @ 9% p.a. on enhanced sum.

I (2007) ACC 249 (Gujarat HC) (DB)

- Compensation — Quantum — Personal injury — Appeal for enhancement — Not fit case — Victim Class 7th student — Serious injuries suffered — 27.5% disability — Tribunal elaborately discussed every aspect of case, granted just and adequate compensation under all heads — Compensation granted despite fact that 3-wheeler scooter carried 10-11 persons who were returning from wedding party and must be in hilarious mood — That may have added to cause of accident — Award of Rs. 1,17,500 upheld.

I (2007) ACC 13 (Delhi HC)

- Fracture in right leg resulted in amputation below thigh — Hospitalisation continued for over one month — Head injury also sustained resulting in constant headache — Enhancement — Assessment of disability and income in proper perspective — 90% disablement of said limb — Disability *vis-a-vis* whole body, to extent of 50% — Tribunal concluded income of victim as Rs. 15,000 p.a. and computed compensation accordingly — Contention, income about Rs. 5,000 p.m. from business of cattle and hides, not accepted — No concrete evidence in proof of said claim — However, victim not non-earning member — Income cannot be taken as Rs. 15,000 p.a. — Income taken as Rs. 2,000 p.m. — Loss to be counted @ 50%, component of loss Rs. 1,000 p.m. — Multiplier of 17 applicable in view of age of claimant — Rs. 2,04,000 assessed as compensation for disability and future loss of income — Tribunal awarded Rs. 1,30,000 towards medical expenses — Certain vouchers wrongly rejected — Rs. 20,000 enhanced under this head — Rs. 20,000 towards pain and sufferings — Claimants entitled to Rs. 3,84,000 as against Rs. 2,04,000 awarded by Tribunal — Interest @ 6% p.a. on enhanced amount.

I (2007) ACC 346 (Madhya Pradesh HC) (DB)

- Injuries to spinal cord, extensive damage — Lost sensation in both hands and legs — Damage to urinary system, victim not in position to pass urine naturally — 80% disability assessed — Tribunal awarded Rs. 2 lakh — Contention of appellant, award excessive, rejected — In light of materials, award rather too low — No ground for reduction — Interest @ 12% p.a. justified.

I (2007) ACC 76 (Madras HC) (DB)

- Multiple fractures sustained in right hand, leg and hip, and penis was cut — Enhancement — Victim was operated upon thrice — Considering various disabilities and necessity to undergo another operation, Tribunal awarded total sum of Rs. 97,000 — Victim loadman — Could not attend to his normal avocation as loadman after accident — Loss of earning capacity to be assessed at 100% — Award of Tribunal too low — Victim could have easily earned Rs. 75 per day *i.e.* Rs. 2,250 p.m. — Multiplier of 10 applied — Pecuniary damages comes to Rs. 2,70,000 — Interest @ 7.5% p.a. on enhanced amount.

I (2007) ACC 180 (Madras HC)

- Reduction — Compensation towards injuries and permanent disability — 40% disability suffered — Rs. 20,000 for fracture, Rs. 10,000 for other two grievous injuries and Rs. 5,000 for two simple ones awarded by Tribunal — Rs. 40,000 treatment expenses awarded on basis of bills — Rs. 18,000 for loss of earning during treatment period — Adding amount towards continuous pain and suffering, Rs. 1,00,000 to be awarded towards injuries — Salary of victim Rs. 3,000 p.m. — After making statutory deductions, Tribunal awarded Rs. 2,30,400 towards disability — Cannot be said that victim became unfit either absolutely or upto 40%, as regards other activities also — Under this head, Rs. 1,50,000 to be awarded — Compensation reduced from Rs. 3,24,900 to Rs. 2,50,000.

I (2007) ACC 284 (Andhra Pradesh HC)

- Suffered grievous injuries, multiple fractures — 80% permanent disability suffered — Victim driver, aged 42 years — Victim in need of attendant — Not able to undertake any work — Dependents : wife and 4 minor children — Award of Rs. 3,12,000 cannot be said to be excessive or unreasonable or illegal or unjustified — Upheld.

I (2007) ACC 91 (Gauhati HC) (DB)

RECOVERY FROM DRIVER

Constitution of India, 1950 — Article 300A — Motor Vehicles Act, 1988 — Section 146(2) — Recovery of Amount — Motor Accident Claim — Appellant, driver of Government vehicle alleged to have caused accident — State and driver, both joint parties — Money alleged to have been paid by State Government — Recovery order against driver passed without taking recourse to any other proceedings — No attempt made to obtain any finding, order or decree of any Tribunal or Court in favour of State against State — Recovery ordered straightaway — Article 300A of Constitution, though not fundamental right, stops depreciation of right to property of citizen without recourse to regular and authorized process of law — Money is also property — If accident denied by State, it cannot in same breath be said driver negligent and caused accident — Issue of negligence could not arise as defence was one of denial of accident — Before imposing financial liability, show-cause would be issued — Impugned order of recovery quashed.

I (2007) ACC 157 (Allahabad HC)

REGISTERED OWNER

Motor Vehicles Act, 1988 — Section 140 — Interim Compensation — Liability to pay — Registered owner *vis-a-vis* one in actual physical possession — Impleadment of parties — Contention of registered owner, vehicle transferred to 'N' by seeking delivery note after receiving payment — However, vehicle not transferred with RTO in favour of 'N' — Appellant claimed for impleadment of 'N' in proceedings *sub judice* with Tribunal — Allowed — Appellant to deposit amount towards interim compensation.

I (2007) ACC 82 (Rajasthan HC) (DB)

REQUISITIONING OF VEHICLE

Motor Vehicles Act, 1939 — Section 95 — Liability of Insurer — Requisitioning of vehicle

— Accident during period of requisition — Liability denied — Legality — Liability, in cases where vehicle requisitioned for election purposes, is joint and several of State Government as well as owner of vehicle — Liability accordingly.

I (2007) ACC 193 (Rajasthan HC)

RES IPSA LOQUITUR

Negligence — Contributory negligence — Plea can be raised only where both parties, in some respects, negligent — In case of unambiguous and clear finding that deceased was hit by jeep from behind, no question of contributory negligence on part of deceased arises — Things being obvious, apparent and self-speaking, there was not even need to consider such plea — Maxim *res ipsa loquitur* applicable — Accident wholly due to rash and negligent driving of jeep.

I (2007) ACC 209 (Andhra Pradesh H (DB))

RES JUDICATA

Motor Accident Claim — Even if questions and answers put in earlier trial, it would not be *res judicata* as between State and Driver or raise any point of issue — This is because array of parties would be totally altered in case between State and Driver.

I (2007) ACC 157 (Allahabad HC)

REVIEW

Motor Vehicles Act, 1988 — Section 169 — Power and procedure of Claims Tribunal — Review of order — Jurisdiction to recall order — Tribunal missed to take note of earlier order passed by this Court, thereby erroneously passed order — Same amounts to passing of order under mistake — Tribunal has inherent jurisdiction to recall its own order when obviously made under mistake.

I (2007) ACC 314 (Karnataka HC)

ROOF TOP

Negligence — Contributory negligence — Travelling on roof top of bus — Accident — Death of passenger — Not *per se* constitutes negligence on part of passenger — No evidence that driver made effort to prevent deceased from boarding roof and travelling in that position — Circumstances show that in fact he allowed it — Hence, deceased not contributed to accident — Heirs entitled to claim compensation.

I (2007) ACC 168 (Jammu & Kashmir HC)

SECOND SCHEDULE

Principles of Assessment — Choice of multiplier — Provisions contained in Second Schedule generally taken as guide — But cases may arise having special features or facts, thereby calling for deviation from multiplier usually applicable.

I (2007) ACC 87 (Uttaranchal HC) (DB)

STATUTORY DEPOSIT

Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer challenging liability — Cross-objections by owner and driver of vehicle — Maintainability — Statutory amount as required under Section 173, not deposited by owner or driver — On face of it, cross-objections not maintainable.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

STRICT RULES OF EVIDENCE

Motor Vehicles Act, 1988 — Section 166 — Civil Procedure Code, 1908 — Order 18 — Claim petition — Dismissal, for want of examination of victim — Legality — Petitioner sustained only simple injuries — Wound certificate marked through one of co-passengers who too sustained injuries — Provisions of Order 18 and rules of evidence do not insist that party should necessarily be examined to prove case — Party entitled to prove his case by examining any competent witness — Tribunal ought not to have dismissed petition on such ground alone — Dismissal bad in law — Petitioner entitled to global compensation of Rs. 10,000 with interest @ 6% p.a.

I (2007) ACC 294 (Karnataka HC)

STRUCTURED COMPENSATION

Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Considerations while allowing petition under Section 163A — Entitlement to compensation — Tribunal required to find whether accident occurred with motor vehicle and lastly resultant injury/death to claimant — Once said three things proved, claimant entitled to seek compensation for loss suffered — While deciding such factors, issue of negligence need not be gone into — In instant case, all ingredients duly proved by claimants — Tribunal rightly granted compensation.

I (2007) ACC 205 (Madhya Pradesh HC)

— Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Abandonment of part of claim to bring it within ambit of Section 163A — Permissibility — Evidence on record that deceased, at relevant time, was drawing more than Rs. 12,000 p.m. as salary — Not open for claimants to restrict their income to Rs. 40,000 p.a., the maximum under Section 163A for claim petition to be entertained — Claim petition not maintainable.

I (2007) ACC 256 (Punjab & Haryana HC)

— Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Final award of compensation based on structured formula — Proof of negligence not necessary — Such compensation may be obtained without claimant being required to plead or establish injuries/death were due to negligence of vehicle owner — Section 163A takes in its sweep even those cases, where victim's own negligence leads to accident.

I (2007) ACC 91 (Gauhati HC) (DB)

— Motor Vehicles Act, 1988 — Sections 163A and 166 — Claim Petition — Not maintainable under Section 166 — Conversion of petition to Section 163A — Legality — No negligence on part of bus driver in causing accident — Claim petition under Section 166 cannot be maintained — Tribunal converted same into one under Section 163A and awarded compensation under no fault liability — Unjustified — Annual income of deceased more than Rs. 40,000, hence claimants could not have invoked provisions of Section 163A — Tribunal erred in awarding compensation under Section 163A, while rejecting their petition under Section 166 of Act.

I (2007) ACC 244 (Himachal Pradesh HC)

SUBSTANTIAL QUESTION OF LAW

Workmen's Compensation Act, 1923 — Section 30 — Appeal — Maintainability — Commissioner, not at all, appreciated evidence led by parties in correct perspective — This amounts to substantial question of law being raised — Appeal maintainable.

I (2007) ACC 38 (Himachal Pradesh HC)

TOTAL LOSS

Insurance — Constructive total loss — Interpretation of — Definition, subject to any

express provision in policy — In case policy contains clause, not commensurate with said provision, terms of insurance contract will be given effect to — Marine Insurance Act, 1963 — Section 60.

I (2007) ACC 47 (SC)

TRANSFER OF VEHICLE

Motor Vehicles Act, 1988 — Section 140 — Interim Compensation — Liability to pay — Registered owner *vis-a-vis* one in actual physical possession — Impleadment of parties — Contention of registered owner, vehicle transferred to 'N' by seeking delivery note after receiving payment — However, vehicle not transferred with RTO in favour of 'N' — Appellant claimed for impleadment of 'N' in proceedings *sub judice* with Tribunal — Allowed — Appellant to deposit amount towards interim compensation.

I (2007) ACC 82 (Rajasthan HC) (DB)

"USE OF VEHICLE"

Accident — Arising out of "use of vehicle" — Proof — Dismissal of claim petition — Legality — Death while deceased was repairing vehicle, which was not in motion — Deceased driver of vehicle — While tractor was standing and trolley put on jack and he was repairing bearing of trolley at that time, jack slipped out and trolley fell upon deceased — Clear from facts of case that after investigation, police found that deceased himself was guilty — Claim petition rightly dismissed.

I (2007) ACC 188 (Rajasthan HC)

— Accident — Injuries sustained — Death of victim — Proof of death being result of injuries sustained in accident arising out of use of motor vehicle — Medical evidence that deceased died due to myocardial infarction leading to cardio respiratory failure — No proof that victim suffered any injury by sudden application of brakes of vehicle — No evidence that there was any external or internal injury or that heart attack caused because of sudden application of brakes — No nexus between alleged injuries and death — No claim entitled.

I (2007) ACC 244 (Himachal Pradesh HC)

VICARIOUS LIABILITY

Motor Vehicles Act, 1939 — Section 95 — Liability of Insurer — Requisitioning of vehicle — Accident during period of requisition — Liability denied — Legality — Liability, in cases where vehicle requisitioned for election purposes, is joint and several of State Government as well as owner of vehicle — Liability accordingly.

I (2007) ACC 193 (Rajasthan HC)

WAGES

Workmen's Compensation Act, 1923 — Section 3 — Death during employment — Employer's liability to compensate — Quantum of compensation — Claim for enhancement — Employer of deceased deposed differently on two occasions, regarding income — Salary certificate issued by him, showing salary as Rs. 4,200 p.m., not proved according to law — Self -same owner, in investigation by insurer, deposed as paying Rs. 3,000 p.m. — Assessment of compensation accordingly — No illegality or irregularity in impugned judgment — Upheld.

I (2007) ACC 171 (Calcutta HC) (DB)

WORDS AND PHRASES

"Compensation" and "damages" — Meaning as stated in Oxford Dictionary, discussed.

I (2007) ACC 209 (Andhra Pradesh H (DB))

— “Strand” — Meaning as defined in various Dictionaries.

I (2007) ACC 47 (SC)

ACC.....Subject Index (Section Wise)

Civil Procedure Code, 1908

— Motor Vehicles Act, 1988 — Section 166 — **Civil Procedure Code, 1908 — Order 18** — Claim petition — Dismissal, for want of examination of victim — Legality — Petitioner sustained only simple injuries — Wound certificate marked through one of co-passengers who too sustained injuries — Provisions of Order 18 and rules of evidence do not insist that party should necessarily be examined to prove case — Party entitled to prove his case by examining any competent witness — Tribunal ought not to have dismissed petition on such ground alone — Dismissal bad in law — Petitioner entitled to global compensation of Rs. 10,000 with interest @ 6% p.a.

I (2007) ACC 294 (Karnataka HC)

Constitution of India, 1950

— **Article 226** — Motor Vehicles Act, 1988 — Sections 149(2) and 173 — Writ petition against award of Tribunal — Maintainability — Liability sought to be denied by alleging breach of terms and conditions of policy — Quantum of compensation also challenged — Statutory right/remedy of appeal under Section 173 of Motor Vehicles Act available — Insurer, instead of availing same filed present writ petition — Petitioner seeks to make remedy of statutory appeal available to it redundant or enlarge scope of restricted right of appeal — Same cannot be allowed — Writ petition not maintainable.

I (2007) ACC 296 (Gauhati HC)

— **Article 300A** — Motor Vehicles Act, 1988 — Section 146(2) — Recovery of Amount — Motor Accident Claim — Appellant, driver of Government vehicle alleged to have caused accident — State and driver, both joint parties — Money alleged to have been paid by State Government — Recovery order against driver passed without taking recourse to any other proceedings — No attempt made to obtain any finding, order or decree of any Tribunal or Court in favour of State against State — Recovery ordered straightaway — Article 300A of Constitution, though not fundamental right, stops depreciation of right to property of citizen without recourse to regular and authorized process of law — Money is also property — If accident denied by State, it cannot in same breath be said driver negligent and caused accident — Issue of negligence could not arise as defence was one of denial of accident — Before imposing financial liability, show-cause would be issued — Impugned order of recovery quashed.

I (2007) ACC 157 (Allahabad HC)

Contract Act, 1872

— Motor Vehicles Act, 1988 — Section 146 — **Contract Act, 1872 — Section 23** — Vehicle Insurance — Necessary against third party risk — Failure — Against public good and public interest — Insurance policy — Premium paid on particular date — Insured cannot opt for date of commencement of insurance coverage, after such payment — Same, against mandate of Section 146 of Act of 1988 that no vehicle be plied without valid insurance coverage — Insurer directed to pay compensation amount to claimants — Tribunal to decide question of fact as to when actual liability of insurer commenced — If insurer found not liable, there shall be direction to realise award amount from owner insured.

I (2007) ACC 228 (Kerala HC)

Employees' State Insurance Act, 1948

- **Second Schedule Entry No. 32** — Employment injury — Entitlement to compensation — Employee sustained blunt injury in eye resulting in diminution of vision — Eye Surgeon found 6/36 loss of vision — As against it Medical Board opined no disability hence no loss of earning capacity provisionally or finally — Unjustified — Said injury falls within purview of Entry No. 32, Second Schedule of Act — Employee entitled to 30% loss of earning capacity — ESI Court rightly relied on findings of eye specialist in preference to view of Medical Board — Order upheld.

I (2007) ACC 177 (Allahabad HC)

J&K Motor Vehicles Rules, 1991

- Motor Vehicles Act, 1988 — Sections 2(16), 2(17), 2(35), 2(47) and 3 — **J&K Motor Vehicles Rules, 1991 — Rule 4(1)(a)** — Driving Licence — Validity — Liability of insurer — Driver of offending vehicle authorised to drive light, medium and heavy motor vehicles — Heavy transport vehicle includes heavy goods and heavy passenger motor vehicles — Licensing Authority also authorised driver to drive public service vehicle all over India — Licence valid and effective — No policy term or condition violated — Insurer liable — Condition imposed by Tribunal regarding recovery of amount from owner and driver, not sustainable, set aside.

I (2007) ACC 241 (Jammu & Kashmir HC)

Limitation Act, 1963

- Limitation — Maintainability of suit — Insurance claim — Claim lodged on 11.8.1988 — Insurer *vide* its letter dated 2.9.1988 stated that claim would be settled strictly in terms of policy — No repudiation at that stage — Actual repudiation made on 1.4.1991 — Suit filed on 7.8.1992 — Limitation period being 3 years, suit not barred, maintainable — **Limitation Act, 1963 — Article 44 of Schedule.**

I (2007) ACC 47 (SC)

Marine Insurance Act, 1963

- Insurance — Constructive total loss — Interpretation of — Definition, subject to any express provision in policy — In case policy contains clause, not commensurate with said provision, terms of insurance contract will be given effect to — **Marine Insurance Act, 1963 — Section 60.**

I (2007) ACC 47 (SC)

- Insurance — Marine Insurance Policy — Goods in transit covered — Constructive total loss — Ship did not proceed due to its unseaworthiness — Vessel stranded — Contract of insurance expressly included risk of non-delivery of even single part of consignment — Further endorsements made in policy, by paying additional premium, in terms whereof risk of non-delivery specifically covered — Where insurer takes additional premium and insures higher risk, no restrictive meaning thereto need be given — Policy included risk of vessel or craft being stranded or grounded — Unseaworthiness of vessel due to which it became stranded, comes within meaning of expression 'peril insured against' — After ship became unseaworthy, insured took steps to recover value of cargo to minimize its loss due to non-delivery — It, therefore, fulfilled its contractual obligation — O.P. liable — Sale proceeds of consignment to be credited in complainant's account — Balance amount payable by insurer — **Marine Insurance Act, 1963 — Sections 60, 78(4).**

I (2007) ACC 47 (SC)

Motor Vehicles Act, 1939

- Motor Vehicles Act, 1988 — Sections 67, 72 and 217 — **Motor Vehicles Act, 1939 — Section 43(1)(i)** — Stage Carriage Permit — Petitioners stage carriage operators — Government order directed them to provide concessions to physically handicapped persons — Validity — Said order issued in exercise of power conferred under Section 43 (1)(i) of 1939 Act — Section 67 of new Act corresponds to Section 43 of old Act — Notification issued under Section 43(1) stands saved by Section 217 of New Act — Nothing in notification which is inconsistent to provisions of 1988 Act — It shall be deemed to have been issued under Section 67 of new Act — Validity of order upheld.

I (2007) ACC 121 (Kerala HC)

- **Section 95** — Liability of Insurer — Requisitioning of vehicle — Accident during period of requisition — Liability denied — Legality — Liability, in cases where vehicle requisitioned for election purposes, is joint and several of State Government as well as owner of vehicle — Liability accordingly.

I (2007) ACC 193 (Rajasthan HC)

- **Section 95** — Goods Vehicle — Death of passenger travelling in goods vehicle as owner of goods — Liability of insurer — Deceased and other injured covered under policy — Specific premium paid to cover such risk — Persons not gratuitous — Insurer liable.

I (2007) ACC 290 (Punjab & Haryana HC)

- **Section 95(2)** — Liability of Insurer — Limits of — Categorical statement on oath that liability of company limited to Rs. 15,000 only — Same in concurrence with pleadings of written statements that liability will be subject to provisions of Act of 1939 and terms of policy — Premium for limited liability of Rs. 15,000 was Rs. 12 per passenger — Premium paid accordingly — Liability of insurer limited to Rs. 15,000 — Rule of pay and recover applicable — Insurer to pay entire amount of compensation with interest @ 12% p.a. — Allowed to recover excess amount in execution from owner and driver.

I (2007) ACC 66 (Delhi HC)

- **Section 95(2)** — Liability of Insurer — Limits of — Rule of pay and recover — Applicability — Vehicle in question being goods vehicle, liability of insurer limited to Rs. 50,000 — Insurer cannot be saddled with liability to pay whole amount — However, it has to satisfy decree at first instance and recover awarded amount over and above excess statutorily liability from owner and driver.

I (2007) ACC 193 (Rajasthan HC)

Motor Vehicles Act, 1939=Motor Vehicles Act, 1988

- **Section 92A=Section 140, Motor Vehicles Act, 1988** — Compensation towards no-fault liability — Claim under Section 92A could be made even by person, whose own negligent act, neglect or default caused accident — Victim only to show that he suffered death/permanent disability on account of said accident.

I (2007) ACC 91 (Gauhati HC) (DB)

- **Section 95(2)=Section 147(2) of Motor Vehicles Act, 1988** — Liability of Insurer — Limits of — Comprehensive policy — Death of 2 persons out of use of vehicle in question — Liability of insurer fixed at Rs. 50,000, rest of amount held payable by owner — Hence appeal — Contention of owner, since nature of policy comprehensive, Tribunal erred in not fastening entire liability upon insurer — Rejected — Merely because policy comprehensive, insurer did not automatically acquire unlimited liability for third party risks — Policy comprehensively covered damage to vehicle and not to third party risks — Order upheld.

I (2007) ACC 27 (Patna HC) (DB)

- **Section 96(2)=Motor Vehicles Act, 1988 — Section 149(2)** — Driving Licence — Validity — Liability of insurer — Driver at relevant time had licence authorising him to drive LMV, MMV and Heavy Goods vehicle — Accident occurred while driving tractor, during insurance cover — Licence valid — Even if it is not, same would only be technical breach of provisions of Act — Not sufficient to exonerate insurer from its liability — Insurer liable.

I (2007) ACC 196 (Gujarat HC)

- **Section 110A=Motor Vehicles Act, 1988 — Section 166** — Code of Civil Procedure, 1908 — Order 9 Rule 13 — Accident — Liability of real owner of offending vehicle to compensate — Appeal by owner — Application for setting aside *ex parte* decree — Dismissed — Hence present petition — Petitioner lady — Plea that, she being divorced by husband, was no longer real owner of vehicle in question, accepted — In view of divorce decree, ownership of offending truck transferred to husband — Said decree binding on all parties — Husband being real owner of truck liable to pay compensation, in place of wife who is only recorded owner.

I (2007) ACC 271 (Orissa HC)

- **Section 110D=Motor Vehicles Act, 1988 — Section 173** — Appeal by Owner — Challenge against liability — Driver of vehicle in question held negligent in causing accident — Plea of appellant, deceased himself negligent, not acceptable — Lodging of FIR against driver, his handing over to custody of police soon after accident, coupled with testimony of eye-witness lead to inference that driver alone was responsible for accident — No evidence from owner's side — Finding of Tribunal upheld — Owner, driver jointly and severally liable.

I (2007) ACC 253 (Uttaranchal HC)

Motor Vehicles Act, 1988

- **Sections 2(10), 3, 14 and 149(2)** — Driving Licence — Non-renewal — Liability of insurer — Driver once licensed, continues to possess ability to drive vehicle unless proved that he incurred any physical disability to drive motor vehicle — Non-renewal of licence would not disable him, as such, to drive vehicle — Such omission of driver would entail infraction of provisions of Act for which he may be appropriately punished — Same however would not permit him to be treated as "not duly licensed" — Insurer liable.

I (2007) ACC 316 (Jammu & Kashmir HC)

- **Sections 2(16), 2(17), 2(35), 2(47) and 3** — J&K Motor Vehicles Rules, 1991 — Rule 4(1)(a) — Driving Licence — Validity — Liability of insurer — Driver of offending vehicle authorised to drive light, medium and heavy motor vehicles — Heavy transport vehicle includes heavy goods and heavy passenger motor vehicles — Licensing Authority also authorised driver to drive public service vehicle all over India — Licence valid and effective — No policy term or condition violated — Insurer liable — Condition imposed by Tribunal regarding recovery of amount from owner and driver, not sustainable, set aside.

I (2007) ACC 241 (Jammu & Kashmir HC)

- **Section 3** — Motor Vehicles Rules, 1991 — Rule 41A — Driving licence — Validity — Authority to drive public service vehicle — As per licence, driver authorised to drive heavy motor vehicles — Same includes heavy goods and heavy passenger vehicles — Even in absence of any public service vehicle endorsement, driver authorised to drive such vehicle — No violation of terms and conditions of policy — Insurer liable to pay compensation amount.

I (2007) ACC 265 (Jammu & Kashmir HC)

- **Sections 67, 72 and 217** — Motor Vehicles Act, 1939 — Section 43(1)(i) — Stage Carriage

Permit — Petitioners stage carriage operators — Government order directed them to provide concessions to physically handicapped persons — Validity — Said order issued in exercise of power conferred under Section 43 (1)(i) of 1939 Act — Section 67 of new Act corresponds to Section 43 of old Act — Notification issued under Section 43(1) stands saved by Section 217 of New Act — Nothing in notification which is inconsistent to provisions of 1988 Act — It shall be deemed to have been issued under Section 67 of new Act — Validity of order upheld.

I (2007) ACC 121 (Kerala HC)

- **Section 140** — Interim Compensation — Liability to pay — Registered owner *vis-a-vis* one in actual physical possession — Impleadment of parties — Contention of registered owner, vehicle transferred to 'N' by seeking delivery note after receiving payment — However, vehicle not transferred with RTO in favour of 'N' — Appellant claimed for impleadment of 'N' in proceedings *sub judice* with Tribunal — Allowed — Appellant to deposit amount towards interim compensation.

I (2007) ACC 82 (Rajasthan HC) (DB)

- **Section 140** — Interim Compensation — Award of — No fault liability — Proof of negligence not necessary — Fact that deceased himself caused accident in question by driving rashly and negligently and died due to his own fault, irrelevant while awarding compensation under Section 140 — Proof of negligence of other vehicle is not condition precedent — Claimants entitled to Rs. 50,000 towards no fault liability.

I (2007) ACC 287 (Jharkhand HC) (DB)

- **Sections 140, 163A and 166** — Award of Compensation — Sections 140 and 166 on one hand and Section 163A on another — Distinctive features of provisions — Both provisions have both advantages as well as disadvantages — Discussed — Both schemes are mutually exclusive and independent of each other — It is for claimant to decide as to which procedure or mechanism he would opt for.

I (2007) ACC 91 (Gauhati HC) (DB)

- **Section 146** — Contract Act, 1872 — Section 23 — Vehicle Insurance — Necessary against third party risk — Failure — Against public good and public interest — Insurance policy — Premium paid on particular date — Insured cannot opt for date of commencement of insurance coverage, after such payment — Same, against mandate of Section 146 of Act of 1988 that no vehicle be plied without valid insurance coverage — Insurer directed to pay compensation amount to claimants — Tribunal to decide question of fact as to when actual liability of insurer commenced — If insurer found not liable, there shall be direction to realise award amount from owner insured.

I (2007) ACC 228 (Kerala HC)

- Constitution of India, 1950 — Article 300A — **Motor Vehicles Act, 1988** — **Section 146(2)** — Recovery of Amount — Motor Accident Claim — Appellant, driver of Government vehicle alleged to have caused accident — State and driver, both joint parties — Money alleged to have been paid by State Government — Recovery order against driver passed without taking recourse to any other proceedings — No attempt made to obtain any finding, order or decree of any Tribunal or Court in favour of State against State — Recovery ordered straightaway — Article 300A of Constitution, though not fundamental right, stops depreciation of right to property of citizen without recourse to regular and authorized process of law — Money is also property — If accident denied by State, it cannot in same breath be said driver negligent and caused accident — Issue of negligence could not arise as defence was one of denial of accident — Before imposing financial liability, show-cause would be issued — Impugned order of recovery quashed.

I (2007) ACC 157 (Allahabad HC)

- **Section 147** — Policy of Insurance — Cancellation due to dishonour of cheque towards premium — Liability of insurer — Liability statutory — Insurer liable to pay — However, Tribunal granted right of recovery to insurer — Rights of insurer already been protected — No merit in appeal of insurer.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

- **Section 147** — Liability of Insurer towards third parties — Liability denied contending, car used for hire or reward which is not covered by policy — No evidence, oral or documentary, led by insurer to prove contention — Provisions of policy makes clear that insurer is liable to third parties in case of their death or bodily injuries — In present case, as per unrebutted evidence, claimant who was travelling has not either hired or paid any reward — Claimant becomes third party — Insurer liable.

I (2007) ACC 338 (Andhra Pradesh HC)

- **Section 147(1)** — Motor Accident Claim — Offending vehicle goods vehicle — Liability of insurer towards gratuitous passenger — If goods vehicle carrying gratuitous passenger, meets with accident, insurer cannot be held liable to pay compensation — Amount, if paid to claimants, to be recovered from owner of vehicle.

I (2007) ACC 207 (SC)

- **Section 147(1)** — Goods Carriage — Carrying fare paying passengers — Death of passengers in accident — Deceased cannot be said to be authorised passengers — No passengers, fare paying or gratuitous, allowed to travel in goods carriage — Insurer not liable.

I (2007) ACC 323 (Himachal Pradesh HC)

- **Section 147(1)** — Goods vehicle — Gratuitous passenger — Liability of insurer — All victims, injured and deceased, returning home after studies/work — Plea of owner that victims hired as labourers for unloading bricks — Admittedly, no goods in truck at time of accident — Victims gratuitous passengers — Insurer wrongly held liable to pay compensation — Owner liable — Insurer to pay award amount and shall recover same from owner.

I (2007) ACC 323 (Himachal Pradesh HC)

- **Section 147(2) Proviso** — Motor Accident Claim — Liability of insurer — Limits of — Accident occurred on 29.9.1989, *i.e.*, within period of 4 months of coming into force Act of 1988 — In accordance with proviso to Section 147(2), policy issued under old Act continues to be effective — As per terms of policy, liability of insurer limited to Rs. 1,50,000 — Liability not unlimited — Impugned order set aside — Insurer entitled to recover amount in excess of Rs. 1,50,000 from owner of vehicle.

I (2007) ACC 219 (SC)

- **Section 149(2)** — Breach of Policy — Burden to prove — On insurer — Liability — Issue of driving licence of driver of offending bus, being fake, raised by insurer — No evidence led in support — Bus driver produced copy of licence before Tribunal — Same found valid and genuine — Insurer utterly failed to establish flouting of terms and conditions of policy — Further plea that at relevant time bus overloaded — Tribunal held that accident occurred due to rash and negligent driving and not due to overloading — Bus comprehensively insured for third party insurance — Insurer bound to pay compensation to passengers travelling in said bus.

I (2007) ACC 184 (Uttaranchal HC)

- **Section 149(2)** — Driving Licence — Validity — Appreciation of evidence — Insurer failed to plead and prove that driver not duly licensed — Liability — Insurance Company totally failed to discharge its burden — Accident occurred on 31.5.1994 —

Letter of RTO produced showing validity of driving licence from 5.2.1991 to 17.1.1994 and from 30.12.1994 to 29.12.1997 — No official produced to prove said endorsement — Insurer liable to pay compensation.

I (2007) ACC 221 (Uttaranchal HC)

- **Section 149(2)** — Breach of policy terms and conditions — Driving licence — Validity — Appeal by insurer challenging liability fastened upon it — Plea, licence of driver fake and mere renewal would not convert same to valid one, cannot be accepted — Controversy in question concluded by law laid down by Apex Court in *Swaran Singh's* case — Employer not negligent in any manner in employing driver — Insurer rightly held jointly and severally liable along with owner and driver of offending vehicle.

I (2007) ACC 233 (Punjab & Haryana HC)

- **Sections 149(2), 170 and 173** — Appeal — Maintainability — Absence of specific order by Tribunal under Section 170 of Act, granting permission to insurer to contest case on merits — Insurer held liable — Hence present appeal — Supreme Court viewed that mere omission on part of Court to do something shall not prejudice any party — In instant case, failure of Tribunal to dispose of application, undoubtedly, prejudiced insurer to great extent — Its entitlement to file appeal jeopardised — Very right to file appeal dangles on decision that ought to have been taken by Tribunal on application under Section 170 — This Court prevented from even deciding question of maintainability of present appeal — Award of Tribunal passed without disposal of important interlocutory application unsustainable — Set aside — Matter remanded.

I (2007) ACC 201 (Kerala HC)

- Constitution of India, 1950 — Article 226 — **Motor Vehicles Act, 1988 — Sections 149(2) and 173** — Writ petition against award of Tribunal — Maintainability — Liability sought to be denied by alleging breach of terms and conditions of policy — Quantum of compensation also challenged — Statutory right/remedy of appeal under Section 173 of Motor Vehicles Act available — Insurer, instead of availing same filed present writ petition — Petitioner seeks to make remedy of statutory appeal available to it redundant or enlarge scope of restricted right of appeal — Same cannot be allowed — Writ petition not maintainable.

I (2007) ACC 296 (Gauhati HC)

- **Sections 149(2)(b) and 149(6)** — Making false representation for issuance of policy — Different description of vehicle — Contention of insurer, since owner made false representation of fact namely different description of vehicle hence policy void and insurer not liable to pay compensation — Rejected — Registration number tallied with vehicle of lorry — Burden is on insurer to prove misrepresentation which was proved to be false one in material particulars — Registration mark and number correctly mentioned in relevant column of policy — Hard to believe that regarding make and model alone, misrepresentation was made — Offending vehicle covered by policy — Insurer liable.

I (2007) ACC 174 (Madras HC)

- **Section 163A** — Claim Petition — Final award of compensation based on structured formula — Proof of negligence not necessary — Such compensation may be obtained without claimant being required to plead or establish injuries/death were due to negligence of vehicle owner — Section 163A takes in its sweep even those cases, where victim's own negligence leads to accident.

I (2007) ACC 91 (Gauhati HC) (DB)

- **Section 163A** — Claim Petition — Considerations while allowing petition under Section 163A — Entitlement to compensation — Tribunal required to find whether accident occurred with motor vehicle and lastly resultant injury/death to claimant — Once said

three things proved, claimant entitled to seek compensation for loss suffered — While deciding such factors, issue of negligence need not be gone into — In instant case, all ingredients duly proved by claimants — Tribunal rightly granted compensation.

I (2007) ACC 205 (Madhya Pradesh HC)

- **Section 163A** — Claim Petition — Abandonment of part of claim to bring it within ambit of Section 163A — Permissibility — Evidence on record that deceased, at relevant time, was drawing more than Rs. 12,000 p.m. as salary — Not open for claimants to restrict their income to Rs. 40,000 p.a., the maximum under Section 163A for claim petition to be entertained — Claim petition not maintainable.

I (2007) ACC 256 (Punjab & Haryana HC)

- **Sections 163A and 166** — Claim Petition — Amendment of — Change of petition made under Section 166 to one under Section 163A — Permissibility — Abundantly clear that cause of action in both proceedings is accident — Permitting of such amendment depends on facts of given case — In instant case, annual income of injured was less than Rs. 40,000 p.a. — No impediment on part of Tribunal to allow claimant to amend his claim petition.

I (2007) ACC 91 (Gauhati HC) (DB)

- **Sections 163A and 166** — Claim Petition — Not maintainable under Section 166 — Conversion of petition to Section 163A — Legality — No negligence on part of bus driver in causing accident — Claim petition under Section 166 cannot be maintained — Tribunal converted same into one under Section 163A and awarded compensation under no fault liability — Unjustified — Annual income of deceased more than Rs. 40,000, hence claimants could not have invoked provisions of Section 163A — Tribunal erred in awarding compensation under Section 163A, while rejecting their petition under Section 166 of Act.

I (2007) ACC 244 (Himachal Pradesh HC)

- **Sections 165 and 166** — Damage to property of third party — Entitlement to claim compensation — Liability of Insurance Company — Claim settled with insurer of damaged vehicle — Claimant not entitled to claim damages from insurer of vehicle responsible for accident — Van of claimant damaged due to negligence of lorry driver — Since van covered under comprehensive policy, claim of claimant for repairs was settled with its insurer — In view of this settlement, claimant cannot claim damages towards same, from insurer of lorry — Both contracts of insurance are for different purpose and operate in different fields — However, claimant entitled to claim Rs. 6,000 from insurer of lorry as general damages.

I (2007) ACC 308 (Andhra Pradesh HC)

- **Section 166** — Claim petition — Dismissal for mere default in appearance of claimant — Legality — No provision in Act and/or Rules permitting or empowering Tribunal to dismiss petition for default — Same can be done if claimant completely failed to prove his claim by failing to appear, take requisite steps and/or adduce evidence — In instant case, claim petition dismissed on mere ground of default — No ground for dismissal — Impugned order of Tribunal not legally sustainable — Set aside.

I (2007) ACC 34 (Gauhati HC)

- **Section 166** — Civil Procedure Code, 1908 — Order 18 — Claim petition — Dismissal, for want of examination of victim — Legality — Petitioner sustained only simple injuries — Wound certificate marked through one of co-passengers who too sustained injuries — Provisions of Order 18 and rules of evidence do not insist that party should necessarily be examined to prove case — Party entitled to prove his case by examining any competent witness — Tribunal ought not to have dismissed petition on such ground

alone — Dismissal bad in law — Petitioner entitled to global compensation of Rs. 10,000 with interest @ 6% p.a.

I (2007) ACC 294 (Karnataka HC)

- **Section 169** — Power and procedure of Claims Tribunal — Review of order — Jurisdiction to recall order — Tribunal missed to take note of earlier order passed by this Court, thereby erroneously passed order — Same amounts to passing of order under mistake — Tribunal has inherent jurisdiction to recall its own order when obviously made under mistake.

I (2007) ACC 314 (Karnataka HC)

- **Section 170** — Impleading insurer in certain cases — Tribunal not permitted insurer's application under Section 170 — No finding regarding collusion between owner and claimants — Insurer not allowed to challenge quantum of compensation.

I (2007) ACC 87 (Uttaranchal HC) (DB)

- **Section 170** — Permission to contest claim on all grounds — Petition filed by insurer — Collusion between claimants and owner — Owner insured not contesting claim petition seriously and effectively — Insurer can seek and be granted permission to contest claim on all grounds open to owner — Claimants have no say in such petition — Tribunal, while exercising discretion, has to decide grant of permission.

I (2007) ACC 235 (Andhra Pradesh HC)

- **Sections 170 and 173** — Motor Accident Claim — Compensation awarded — Appeal by insurer challenging quantum — Maintainability — In instant case, owner of vehicle contested claim — Insurer could not prefer appeal, even if owner joined him as party appellants — High Court wrongly allowed appeal at instance of insurer — Impugned order set aside — Award of Tribunal restored.

I (2007) ACC 85 (SC)

- **Section 171** — Motor Accident Claim — Compensation — Rate of interest — Accident occurred seventeen years ago, in year 1988 — Tribunal awarded compensation with interest @ 12% p.a. — Same maintained by High Court — Having regard to facts and circumstances no interference required — Rate of interest so awarded, upheld.

I (2007) ACC 207 (SC)

- **Section 173** — Appeal by Insurer — Decree obtained by claimants by playing fraud on insurer — Challenge against — Claimants suppressed fact that lorry involved in accident was owned by deceased himself who was driving vehicle at relevant time — Policy covered risk of only third party, risk of owner insured not covered — Claimants falsely alleged that vehicle was owned by one 'M' — Fraud vitiates entire proceedings — In interest of justice award of Tribunal liable to be set aside.

I (2007) ACC 15 (Madras HC)

- **Section 173** — Appeal by Insurer — Issue regarding validity of driving licence of offending driver — Submission of insurer, specific issue that licence not valid, raised before Tribunal — Hence, liability denied — In these circumstances, case remanded to decide issue as to validity of driving licence — Thereafter liability to pay compensation to be decided.

I (2007) ACC 75 (Allahabad HC) (DB)

- **Section 173** — Appeal by Insurer challenging liability — Cross-objections by owner and driver of vehicle — Maintainability — Statutory amount as required under Section 173, not deposited by owner or driver — On face of it, cross-objections not maintainable.

I (2007) ACC 305 (Madhya Pradesh HC) (DB)

- **Section 173(2)** — Appeal — Maintainability — Award amount less than Rs. 10,000 — No appeal can be preferred in view of provisions of Section 173(2) of Act.

I (2007) ACC 184 (Uttaranchal HC)

Motor Vehicles Rules, 1991

- Motor Vehicles Act, 1988 — Section 3 — **Motor Vehicles Rules, 1991 — Rule 41A** — Driving licence — Validity — Authority to drive public service vehicle — As per licence, driver authorised to drive heavy motor vehicles — Same includes heavy goods and heavy passenger vehicles — Even in absence of any public service vehicle endorsement, driver authorised to drive such vehicle — No violation of terms and conditions of policy — Insurer liable to pay compensation amount.

I (2007) ACC 265 (Jammu & Kashmir HC)

Workmen's Compensation Act, 1923

- **Sections 2(1)(n), 2(1)(e)** — Workman — Employer — Mechanic engaged for repairing installed pump — Death while doing work — Deceased workman — Liability of employer to compensate — Deceased engaged only by appellant No. 3 — Contention of appellants 1 and 2 that they are not liable, not acceptable — Workman was engaged for repairing motor installed and fitted within premises jointly belonging to appellants — Hence, all appellants equally liable to pay compensation amount.

I (2007) ACC 190 (Madhya Pradesh HC)

- **Section 3** — Death during employment — Employer's liability to compensate — Quantum of compensation — Claim for enhancement — Employer of deceased deposed differently on two occasions, regarding income — Salary certificate issued by him, showing salary as Rs. 4,200 p.m., not proved according to law — Self -same owner, in investigation by insurer, deposed as paying Rs. 3,000 p.m. — Assessment of compensation accordingly — No illegality or irregularity in impugned judgment — Upheld.

I (2007) ACC 171 (Calcutta HC) (DB)

- **Sections 3 and 30** — Death during employment — Employer's liability to compensate — Proof of employment and fact of suffering accidental death during course of employment — As per claimants, deceased employed with respondents for breaking stones in their mines — Huge stone fell and hit head of deceased while he was working — Version of claimants supported by contemporaneous evidence — Claim refuted by respondents — Fact of employment disputed — Contention, no mine either in his own name or in name of any member of his family — Rejected — Statements of co-workers supporting claimants' case in entirety, cannot be disbelieved — Conclusion that deceased was employed for breaking and extracting stones in mine of respondents, can be drawn — Contrary finding of Commissioner, being based on total misappreciation and misreading of evidence, liable to be set aside — Respondents liable.

I (2007) ACC 38 (Himachal Pradesh HC)

- **Section 4** — Compensation — Principles of assessment — Quantum of compensation — Accident occurred on 9.8.1995 — Rights of parties get fructified on date of accident — Compensation to be assessed as per law existing on said date — Workman got wages of Rs. 2,000 p.m. — Relevant factor 221.37 — 40% of maximum wages to be multiplied by relevant factor — Compensation of Rs. 88,548 payable with interest @ 6% p.a.

I (2007) ACC 38 (Himachal Pradesh HC)

- **Section 4A(3)(a)** — Interest on Account of Compensation — Insurer's liability to pay —

Policy not produced to show that liability for payment of interest on awarded amount excluded by contract of insurance entered into between owner and insurer — Liability not excluded by specific term of contract — Insurer statutorily liable to pay interest.

I (2007) ACC 171 (Calcutta HC) (DB)

- **Section 30** — Appeal — Maintainability — Commissioner, not at all, appreciated evidence led by parties in correct perspective — This amounts to substantial question of law being raised — Appeal maintainable.

I (2007) ACC 38 (Himachal Pradesh HC)

- **Section 30** — Death During Employment — Deceased cleaner on vehicle insured with appellant — Appeal against liability — Contention of appellant, workman sustained injuries while drilling insured vehicle 'rig' as rig but not while using vehicle as motor vehicle, insurer not liable — Rejected — Insurance policy comprehensive one — Separate premium received covering risk of employees — No exclusion clause — Admittedly, deceased was operating 'rig' as rig operator under insured — Risk covered by payment of extra premium — Insurer liable to indemnify insured though vehicle was not in use as motor vehicle — Liability upheld.

I (2007) ACC 69 (Madras HC)
