

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

## ABATEMENT

Motor Vehicles Act, 1988 — Section 155 — Death of owner of offending vehicle — Abatement of proceedings — Soon after coming to know such death, claimants filed application to bring R-5 and R-6 as legal representatives — True that R-5 and R-6 did not succeed to estate of deceased — Their impleadment was only to continue proceedings *vis-a-vis* estate of deceased — Section 155 of Act directs proceedings do not abate on death of insured.

### IV (2006) ACC 610 (Andhra Pradesh HC)

## ACCIDENTAL INJURY

Injuries suffered therein — Consequent death — Proof — Cause of death — Medical evidence that deceased suffered fracture of spine and had become paraplegia when brought to hospital — On account of such fracture, he was rendered 100% disabled — Fact that deceased sustained injuries in alleged accident, amply supported by ocular version of doctor — Can also not be disputed that same led to his death — Gap of about 7 months not suggestive of fact that he died natural death.

### IV (2006) ACC 690 (Punjab & Haryana HC)

## ADDITIONAL EVIDENCE

Application for — Insurance cover in name of appellant — Proof — Cover note, sought to be produced, pertains to period subsequent to date of accident — Document, of no help to appellant — Grant of application would be exercise in futility — Rejected.

### IV (2006) ACC 445 (Punjab & Haryana HC)

## AGENT

Life Insurance — Group personal Accident Policy — Repudiation of claim — Violation of policy alleged — Delay in giving information regarding death of life insured — Deceased police constable — Policy taken by Police Department — Police headquarters or District Superintendent of Police acted as agent of insurer — Information regarding death received by agent would satisfy said condition of policy — Any default on part of agent in passing on information to insurer, would be dispute between principal and agent — Same not fatal to claim of petitioners — Information to agent must be deemed as information to principal — Plea of violation of policy not available — Insurer liable under policy.

### IV (2006) ACC 415 (Patna HC)

## AGREEMENT

Workmen's Compensation Act, 1923 — Section 3(5)(b) — Employer's Liability for Compensation — Agreement between parties providing for payment of compensation — Scope of — Any such agreement must be post-accident one, providing for settlement of claim in accordance with provisions of Act — Object underlying Section 3(5)(b) is to prevent litigation post-settlement — After such agreement is arrived at between parties, no suit for damages can be maintained in Civil Court.

### IV (2006) ACC 464 (Delhi HC) (DB)

## APPEAL

Motor Vehicles Act, 1988 — Section 173 — Appeal by Insurer — Liability to compensate disputed — Accident between car and tractor — Death of deceased — Negligence of tractor driver not imputed by claimants — Driver of car held valid licence — Insurer liable to induct insured for awarded amount of compensation — No merit in appeal.

### IV (2006) ACC 569 (Punjab & Haryana HC) (DB)

— Motor Vehicles Act, 1988 — Section 173 — Maintainability — Case of frivolous litigation —

Appellant is challenging against enhancement of compensation by Single Judge in one death case — No appeal filed by insurer — Appellant has nothing at all to urge in support of this appeal — Reason, it was not aggrieved by impugned order — Appeal filed frivolously, with no chances of success — Litigation wholly avoidable — Appeal to be dismissed with costs.

#### **IV (2006) ACC 473 (Rajasthan HC) (DB)**

— Motor Vehicles Act, 1988 — Sections 168, 173 — Motor Vehicles Rules, 1994 — Rule 242 — Civil Procedure Code, 1908 — Order 41 — Single appeal against common award, clubbing 2 separate claim cases — Maintainability — Nothing in Section 173, prohibiting filing of one appeal against such common award — Rather Section 173 read with Section 168 shows that an appeal can be filed against common award on several claims — Appeal maintainable.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

##### **APPORTIONMENT OF LIABILITY**

Negligence — Composite Negligence — Legality of — Accident between truck and jeep — Truck driver failed to use dipper so that vehicle from opposite direction could move comfortably — Vehicle being driven at high speed — Duty of truck, heavy vehicle to give space to smaller ones — Statement of jeep driver, truck came in full speed with full lights, due to its headlights, jeep driver's eyes were glazed and, therefore, jeep had to be taken to left of road, as a result it hit tree and got damaged — No objection against such evidence — Tribunal rightly held truck driver responsible upto 90% and jeep driver 10%.

#### **IV (2006) ACC 432 (Gujarat HC) (DB)**

— Negligence — Contributory negligence — Accident while overtaking ongoing vehicle — Truck coming from opposite direction hit overtaking bus — Bus driver died at spot, injuries to several other passengers — Tribunal held bus driver negligent upto 50%, apportioned liability accordingly — No evidence that deceased took precaution before overtaking ongoing vehicle — Deceased, before overtaking, was supposed to ensure that his overtaking would not be source of danger to other traffic coming from opposite direction — Nothing to show that any steps were taken in such respect — Tribunal rightly concluded that he was equally responsible for accident — Apportionment of liability upheld.

#### **IV (2006) ACC 669 (Punjab & Haryana HC)**

##### **AWARD**

Motor Vehicles Act, 1939 — Section 110B — Compensation — Adjustment of amount already paid — Owner paid Rs. 21,600 to claimants — Same shall be adjustable towards payment of compensation.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

##### **BREACH OF POLICY CONDITIONS**

Motor Vehicles Act, 1988 — Section 149(2) — Burden to prove always on insurer — Plea taken by insurer that driver of concerned vehicle did not have valid and effective licence — In appeal, plea taken that victim was gratuitous passenger — Burden to prove breach of policy not discharged — Insurer liable.

#### **IV (2006) ACC 668 (Bombay HC)**

— Life Insurance — Group personal Accident Policy — Repudiation of claim — Violation of policy alleged — Delay in giving information regarding death of life insured — Deceased police constable — Policy taken by Police Department — Police headquarters or District Superintendent of Police acted as agent of insurer — Information regarding death received by agent would satisfy said condition of policy — Any default on part of agent in passing on information to insurer, would be dispute between principal and agent — Same not fatal to claim of petitioners — Information to agent must be deemed as information to principal — Plea of violation of policy not available — Insurer liable under policy.

#### **IV (2006) ACC 415 (Patna HC)**

## **CASUAL CONNECTION**

Workmen's Compensation Act, 1923 — Sections 2(n), 3 — 'Workman' — Death arising out of and in course of employment — Proof — Casual connection between accident and employment of deceased — Deceased auto driver — While driving, he suffered severe chest pain, control over vehicle lost and vehicle was upset — Deceased taken to doctor, declared dead — 1st and 2nd opposite parties denied relationship of deceased with them as employer and employee — First O.P. owner failed to prove, by producing his driving licence, that he was owner-cum-driver of auto — Similarly, 2nd O.P. also failed to prove that he was driver employed with O.P. 1 — Absence of any documentary proof from side of O.Ps. — Commissioner rightly concluded deceased was workman as per Act — No point agitated to disprove finding of Commissioner — Evident that accident of employee had casual connection with his employment — Finding that deceased died out of and in course of injuries suffered out of employment, upheld.

### **IV (2006) ACC 475 (Madras HC)**

#### **CLAIM PETITION**

Motor Vehicles Act, 1988 — Section 166 — 2 claims by 2 different groups of legal representatives in respect of death of one person — Maintainability — Tribunal passed awards — Appeal by insurer — Payment of compensation twice, on account of death of same person, not permissible — Earlier petition filed by wife and children, second one by second wife — Award passed in second petition deserves to be quashed — Matter remanded to Tribunal — Second wife to be impleaded as party — Directions to distribute and disburse amount amongst claimants after they establish their rights as legal representatives of deceased.

### **IV (2006) ACC 559 (Gujarat HC)**

— Motor Vehicles Act, 1988 — Section 166 — Entertainment of — Limitation — Petition has to be entertained by Tribunal without taking note of date, on which accident occurred.

### **IV (2006) ACC 690 (Punjab & Haryana HC)**

#### **COMPASSIONATE EMPLOYMENT**

Principles of Assessment — Grounds to deny compensation — Providing compassionate employment to one of dependants of deceased — Same might be one of conditions of service — It cannot be taken as ground to deny compensation to claimants.

### **IV (2006) ACC 592 (Andhra Pradesh HC)**

#### **CONTRACT**

Workmen's Compensation Act, 1923 — Section 17 - "Contracting Out" — Workman not permitted to contract out of and to waive liability of employer under Act — However, employer and insurer are free to contract terms of insurance as per their own volition.

### **IV (2006) ACC 570 (Rajasthan HC)**

#### **CONTRACTOR**

Workmen's Compensation Act, 1923 — Section 12 — Accident arising out of and during course of employment — Entitlement to be compensated — Workman engaged with contractor — Liability of principal employer *vis-a-vis* contractor — As per Section 12, principal employer liable even in respect of worker engaged under contractor if work entrusted with contractor is connected with trade or business of principal employer — In present case, respondent No. 2 is Engineer/Contractor, respondent No. 3 Military Engineering Services is principal employer — Workman was directed to fix notice board on wall of site belonging to Engineer/Contractor — While doing so, wall collapsed, workman died — In case of Defence Department, work of fixing tubelight in signboard, cannot be said to be ordinarily part of trade or business — Cannot be held that principal employer is responsible to make good loss sustained by claimant — Second respondent liable.

### **IV (2006) ACC 696 (Madras HC)**

#### **COURSE OF EMPLOYMENT**

Workmen's Compensation Act, 1923 — Section 12 — Accident arising out of and during course of employment — Entitlement to be compensated — Workman engaged with contractor — Liability of principal employer *vis-a-vis* contractor — As per Section 12, principal employer liable even in respect of worker engaged under contractor if work entrusted with contractor is connected with trade or business of principal employer — In present case, respondent No. 2 is Engineer/Contractor, respondent No. 3 Military Engineering Services is principal employer — Workman was directed to fix notice board on wall of site belonging to Engineer/Contractor — While doing so, wall collapsed, workman died — In case of Defence Department, work of fixing tubelight in signboard, cannot be said to be ordinarily part of trade or business — Cannot be held that principal employer is responsible to make good loss sustained by claimant — Second respondent liable.

#### **IV (2006) ACC 696 (Madras HC)**

— Workmen's Compensation Act, 1923 — Sections 2(n), 3 — 'Workman' — Death arising out of and in course of employment — Proof — Casual connection between accident and employment of deceased — Deceased auto driver — While driving, he suffered severe chest pain, control over vehicle lost and vehicle was upset — Deceased taken to doctor, declared dead — 1st and 2nd opposite parties denied relationship of deceased with them as employer and employee — First O.P. owner failed to prove, by producing his driving licence, that he was owner-cum-driver of auto — Similarly, 2nd O.P. also failed to prove that he was driver employed with O.P. 1 — Absence of any documentary proof from side of O.Ps. — Commissioner rightly concluded deceased was workman as per Act — No point agitated to disprove finding of Commissioner — Evident that accident of employee had casual connection with his employment — Finding that deceased died out of and in course of injuries suffered out of employment, upheld.

#### **IV (2006) ACC 475 (Madras HC)**

— Workmen's Compensation — Assault — Arising out of and during course of employment — Employer's liability to compensate — Claim rejected holding that there was no causal connection between death and employment — Hence present appeal — Deceased switchman at Railway Station — Group of anti-social elements armed with deadly weapons trespassed Station Master's office and damaged railway property — Deceased, though after completion of his duty period, came out to pacify mob — Suffered *lathi* blow while trying to do so — Deceased courageous enough to come out to save railway property even after his duty hours — Cannot be said death not in course of employment — Claimants entitled for compensation— Workmen's Compensation Act, 1923 — Section 3.

#### **IV (2006) ACC 622 (SC)**

— Workmen's Compensation — Death during employment — Employer's liability to compensate — Liability denied stating, son of deceased was given compassionate appointment and full service benefits paid — Same, no ground to deny compensation to dependents payable under Act — Workmen's Compensation Act, 1923 — Section 3.

#### **IV (2006) ACC 622 (SC)**

##### **COURT FEES**

Motor Vehicles Act, 1988 — Section 173 — Madras High Court Appellate Side Rules, 1965 — Order 1 Rules 1(6)(a) and 2(5)(c) — Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Sections 52 and 53 — Appeal — Subject matter of appeal — Valuation of — Placing of appeals before Single Judge or Division Bench of this Court — "Value of subject matter of appeal" means value of relief refused or granted which is appealed against plus interest if any, that accrued pending proceedings — If such value is Rs. 15,00,000 or upwards, appeal is to be placed before Division Bench and in case it is less than Rs. 15,00,000, appeal to be placed before Single Judge.

#### **IV (2006) ACC 395 (Madras HC)**

##### **DEDUCTION (EX GRATIA)**

Principles of Assessment — Compensation — Deduction of amounts granted under *ex gratia* and

group insurance, etc. from compensation amount — *Ex gratia* or some other amount is paid on humanitarian grounds and benevolence — It forms social responsibility of employer or Government — Payment of group insurance or provident fund etc. is from out of mandatory contribution and savings made by deceased — Such payments cannot be deducted from compensation granted by Tribunal under Motor Vehicles Act.

#### **IV (2006) ACC 592 (Andhra Pradesh HC)**

##### **DEDUCTION (FAMILY PENSION)**

Principles of Assessment — Calculation of dependency — Death of husband — Amount of family pension drawn by widow of deceased, liable to be ignored while calculating compensation payable.

#### **IV (2006) ACC 601 (Punjab & Haryana HC)**

— Principles of Assessment — Income — Deduction of amount of pension — Legality — Family pension payable to widow of deceased not to be deducted from total salary of deceased.

#### **IV (2006) ACC 529 (Gauhati HC) (DB)**

##### **DEDUCTION (GROUP INSURANCE)**

Principles of Assessment — Compensation — Deduction of amounts granted under *ex gratia* and group insurance, etc. from compensation amount — *Ex gratia* or some other amount is paid on humanitarian grounds and benevolence — It forms social responsibility of employer or Government — Payment of group insurance or provident fund etc. is from out of mandatory contribution and savings made by deceased — Such payments cannot be deducted from compensation granted by Tribunal under Motor Vehicles Act.

#### **IV (2006) ACC 592 (Andhra Pradesh HC)**

##### **DEFENCES**

Motor Vehicles Act, 1988 — Sections 149(2) and 170 — Defences available to insurer — Right to contest claim on all grounds — Absence of Permission under Section 170, from Tribunal — Insurer does not get automatic right to defend claim on grounds not covered by Section 149(2) — Finding of Tribunal on question of negligence, cannot be assailed — Defences limited to those mentioned under Section 149(2).

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

##### **DEPENDENCY**

Quantum — Fatal — 40 years — Enhancement — Deceased driver, earning Rs. 1,325 p.m. — Claimants widow, 7 children and father of deceased — Tribunal deducted Rs. 625 and arrived at monthly dependency at Rs. 700 — Departure from normal rule of 1/3rd deduction for personal expenses — No reasons given — Order erroneous — Deceased left behind large family — Rs. 425 to be deducted on said count — Dependency Rs. 900 p.m. — Multiplier of 16 appropriate — Compensation comes to Rs. 1,72,800 — Since deceased negligent upto 50% , claimants entitled to Rs. 86,400 *i.e.*, Rs. 19, 200 over and above amount awarded by Tribunal — Enhanced compensation payable @ 9% p.a.

#### **IV (2006) ACC 669 (Punjab & Haryana HC)**

##### **DEPENDENTS**

Principles of Assessment — Entitlement to compensation — 2 sons of deceased aged about 27 and 29 years respectively cannot be treated as dependents of deceased — Their claim rightly rejected by Tribunal.

#### **IV (2006) ACC 575 (Punjab & Haryana HC)**

##### **DISABILITY CERTIFICATE**

Accident — Personal injury — Permanent disability — Extent of — Leg fractured — Hospitalisation for many days — Injuries behind head, serious pain in neck — Victim suffered

paralysis — 70% permanent disability — Appeal by insurer — Contention, Neuro-Surgeon who issued disability certificate not been examined to prove same — Ample evidence on record to arrive at conclusion that claimant suffered disability to tune of 70% in form of paralysis of both legs — Orthopaedic Surgeon testified medical condition of victim and assessed disability to extent of 70% — Such evidence cannot be disregarded on ground that he being Orthopaedic Surgeon, was not competent to assess disability due to spinal cord injury — No evidence to show disability certificates not genuine ones — Award of Tribunal based upon such assessment, cannot be found fault with — Order upheld.

#### **IV (2006) ACC 406 (Gujarat HC) (DB)**

##### **DISHONOURMENT OF CHEQUE**

Insurance Policy — Transfer of ownership of vehicle — Bouncing of cheque given by original owner towards premium — Cancellation of cover-note — Vehicle sold to respondent No. 4, present owner — In such circumstances, insurer not liable to indemnify owner — Remedy of present owner lies against previous owner — Award of Tribunal set aside, to extent it directs insurer liable to compensate — Owner of vehicle at relevant time and its driver liable.

#### **IV (2006) ACC 562 (Himachal Pradesh HC)**

##### **DOUBLE COMPENSATION**

Motor Vehicles Act, 1988 — Section 166 — Claim Petition — 2 claims by 2 different groups of legal representatives in respect of death of one person — Maintainability — Tribunal passed awards — Appeal by insurer — Payment of compensation twice, on account of death of same person, not permissible — Earlier petition filed by wife and children, second one by second wife — Award passed in second petition deserves to be quashed — Matter remanded to Tribunal — Second wife to be impleaded as party — Directions to distribute and disburse amount amongst claimants after they establish their rights as legal representatives of deceased.

#### **IV (2006) ACC 559 (Gujarat HC)**

##### **DOUBLE INSURANCE**

Motor Vehicles Act, 1988 — Section 157 — Transfer of Certificate of Insurance — Liability of insurer — Vehicle transferred — Subsequent owner obtained insurance coverage, while vehicle already stood under insurance with another insurer — Tribunal held both Insurance Companies jointly and severally liable — Hence appeal — No provision in Act which permits vehicle to be insured by two different insurance companies — In instant case, since transferee obtained fresh insurance policy, existing policy stands terminated and ceases to be operative — In such situation, company, with whom vehicle insured afresh after transfer of ownership of vehicle, shall alone be liable to pay compensation.

#### **IV (2006) ACC 589 (Jharkhand HC) (DB)**

##### **DRIVING LICENCE**

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy Conditions — Burden to prove always on insurer — Plea taken by insurer that driver of concerned vehicle did not have valid and effective licence — In appeal, plea taken that victim was gratuitous passenger — Burden to prove breach of policy not discharged — Insurer liable.

#### **IV (2006) ACC 668 (Bombay HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Validity — Relevance of issue — Question as to whether licence of driver valid, becomes relevant only when there is no dispute as to who drove vehicle — Examination of official from RTA, hardly helps matter, as long as dispute existed as to identity of driver.

#### **IV (2006) ACC 610 (Andhra Pradesh HC)**

##### **DUTY HOURS**

Workmen's Compensation — Assault — Arising out of and during course of employment — Employer's liability to compensate — Claim rejected holding that there was no causal connection

between death and employment — Hence present appeal — Deceased switchman at Railway Station — Group of anti-social elements armed with deadly weapons trespassed Station Master's office and damaged railway property — Deceased, though after completion of his duty period, came out to pacify mob — Suffered *lathi* blow while trying to do so — Deceased courageous enough to come out to save railway property even after his duty hours — Cannot be said death not in course of employment — Claimants entitled for compensation— Workmen's Compensation Act, 1923 — Section 3.

#### **IV (2006) ACC 622 (SC)**

- Workmen's Compensation — Death during employment — Employer's liability to compensate — Liability denied stating, son of deceased was given compassionate appointment and full service benefits paid — Same, no ground to deny compensation to dependents payable under Act — Workmen's Compensation Act, 1923 — Section 3.

#### **IV (2006) ACC 622 (SC)**

##### **EVIDENCE**

Accident — Injuries suffered therein — Consequent death — Proof — Cause of death — Medical evidence that deceased suffered fracture of spine and had become paraplegia when brought to hospital — On account of such fracture, he was rendered 100% disabled — Fact that deceased sustained injuries in alleged accident, amply supported by ocular version of doctor — Can also not be disputed that same led to his death — Gap of about 7 months not suggestive of fact that he died natural death.

#### **IV (2006) ACC 690 (Punjab & Haryana HC)**

- Accident — Involvement of vehicle — Proof — Evidence of eye-witnesses — Reliability — Accident while plough being carried in tractor hit deceased scooter rider — Death — Appellants owner and driver denied any accident with their vehicle — Plea of limitation in filing claim petition also taken — Plea rejected — Accident on 25.5.2000 — Claim petition filed on 15.6.2001 — Identity of real culprit disclosed only in June 2001 — Claim petition filed thereafter cannot be said to be belated — Further contention that presence of alleged eye witness not probable — Not accepted — Statement of eye witness duly disclosed details of accident and manner in which it occurred — Witness even identified driver in Court — Testimony of this witness not shaken in cross-examination — Admittedly, no enmity between parties to have falsely implicated appellants — Tribunal rightly held accident and death resulted from rash and negligent driving by truck driver — Appellants liable.

#### **IV (2006) ACC 533 (Punjab & Haryana HC)**

- Accident — Personal injury — Permanent disability — Extent of — Leg fractured — Hospitalisation for many days — Injuries behind head, serious pain in neck — Victim suffered paralysis — 70% permanent disability — Appeal by insurer — Contention, Neuro-Surgeon who issued disability certificate not been examined to prove same — Ample evidence on record to arrive at conclusion that claimant suffered disability to tune of 70% in form of paralysis of both legs — Orthopaedic Surgeon testified medical condition of victim and assessed disability to extent of 70% — Such evidence cannot be disregarded on ground that he being Orthopaedic Surgeon, was not competent to assess disability due to spinal cord injury — No evidence to show disability certificates not genuine ones — Award of Tribunal based upon such assessment, cannot be found fault with — Order upheld.

#### **IV (2006) ACC 406 (Gujarat HC) (DB)**

- Accident — Proof of death being resulted from injuries sustained therein — Post-mortem report, being public document is admissible in evidence — Death of victim in accident corroborated by evidence of eye-witness and by admission of owner — Finding of Tribunal that death not been proved, set aside — Held, deceased died in said accident.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

- Motor Vehicles Act, 1988 — Scope and Object — Applying strict rules of evidence —

Unjustified — Act, beneficial statute — Purpose is to provide immediate relief in form of just and reasonable compensation to unfortunate accident victims — To take hyper-technical view and apply strict rules of evidence in claims under Motor Vehicles Act, would defeat very purpose and object behind enactment of Act.

#### **IV (2006) ACC 406 (Gujarat HC) (DB)**

- Motor Vehicles Act, 1988 — Sections 147(1) and 149(2) — Breach of Policy — Failure to prove — FIR — Reliability — As per FIR, accident and consequent death of victims occurred while they were travelling in truck — Rule of law that FIR not substantive piece of evidence — Maker of FIR was examined, and he contradicted story narrated in FIR — No other document produced by insurer to prove that at relevant time deceased were travelling in truck — Clear statement of claimants that truck driven negligently, turned turtle at spot where deceased were standing — Court bound to accept evidence of claimants — Insurer failed to prove breach of policy by owner of truck that it carried passengers — Liability joint and several to pay compensation.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

- Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Maintainability — Requirement to prove sustaining of permanent disability by victim — Claimant chose to claim compensation under Section 163A — No evidence that any injury resulting in permanent disablement or physical impairment — In absence of such proof, claimant not entitled to claim compensation — Claim petition rightly dismissed as being not maintainable.

#### **IV (2006) ACC 686 (Madhya Pradesh HC)**

- Motor Vehicles Act, 1988 — Section 147(2) — Liability of Insurer — Extent of — Sustainability of plea regarding limited liability — Insurer never raised such plea in reply before lower Courts and never led any evidence — Apparent that insurer never had any such defence that it was case of limited statutory liability — In case liability was limited, required of insurer to have taken specific pleadings and then proved essential facts by necessary evidence — Having failed to do so, insurer liable to satisfy entire award.

#### **IV (2006) ACC 584 (Rajasthan HC)**

- Negligence — Causing accident by negligent driving — Proof — Plea that accident occurred due to bad slippery condition of road due to rains and fog and not due to negligence — Driver, driving offending vehicle admitted, that though fog was there, but road easily visible and there was no difficulty in driving vehicle — Also admitted that brakes of vehicle were in proper condition — Principles of *res ipsa loquitur* applicable — Negligence of driver concluded — Since fault committed during employment, owner alone liable to pay compensation.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

- Negligence — Rash and negligent driving — Appreciation of evidence — Car collided against bridge — Passengers therein suffered injuries — Car driver admitted that he was driving rashly and negligently — FIR, sketch showing manner of accident, report of Motor Vehicles Inspector, Accident Register, etc. helped Tribunal to fix negligence on part of car driver — Finding upheld.

#### **IV (2006) ACC 458 (Madras HC)**

- Negligence — Rash and negligent driving — Proof — Death of motor cyclist on being hit by three-wheeler — Case rests on statement of eye-witness — His statement that, motor cyclist was on correct side of road whereas, three-wheeler came from opposite side and hit against motorcycle thereby causing accident — Said witness independent one — He lodged FIR with utmost promptness — Prompt lodging of FIR rules out every possibility of consultations and deliberations — Cannot be said false case registered against impugned driver — Tribunal rightly held him negligent and liable for causing accident.

#### **IV (2006) ACC 578 (Punjab & Haryana HC)**

##### ***EX PARTE***

Limitation Act, 1963 — Section 5 — Civil Procedure Code, 1908 — Order 43 Rule 1, Order 9

Rule 13 — Limitation — Dismissal of application filed under Section 5 of Act of 1963 — Present appeal filed under Rule 1 Order 43 — Maintainability — Tribunal passed *ex parte* order in claim petition, against appellants — Application under Order 9 Rule 13 dismissed as being barred by limitation — Hence present appeal — Dismissal of application on account of limitation has effect of rejection of application under Order 9 Rule 13 — Permissible for aggrieved party to avail remedy of appeal under Order 43 Rule 1 — Appeal maintainable.

#### **IV (2006) ACC 665 (Andhra Pradesh HC)**

— Principles of Assessment — Awarding whole amount as claimed — Award *ex parte* — Legality — Even when no resistance by owner or insurer of vehicle, obligatory on Tribunal to analyse nature of injuries, amount to be awarded towards pain and suffering, loss of earnings, medical expenses, etc. — Award passed by Tribunal without satisfying itself as to aforesaid factors, unsustainable, set aside.

#### **IV (2006) ACC 665 (Andhra Pradesh HC)**

##### **FIR**

Motor Vehicles Act, 1988 — Sections 147(1) and 149(2) — Breach of Policy — Failure to prove — FIR — Reliability — As per FIR, accident and consequent death of victims occurred while they were travelling in truck — Rule of law that FIR not substantive piece of evidence — Maker of FIR was examined, and he contradicted story narrated in FIR — No other document produced by insurer to prove that at relevant time deceased were travelling in truck — Clear statement of claimants that truck driven negligently, turned turtle at spot where deceased were standing — Court bound to accept evidence of claimants — Insurer failed to prove breach of policy by owner of truck that it carried passengers — Liability joint and several to pay compensation.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

##### **FIRE CLAIM**

Constitution of India, 1950 — Article 226 — Insurance — Repudiation of claim — Writ petition against — Maintainability — Claim regarding fire accident in chemical factory of petitioner — Burning of 222 mts. of sulphur and 40 tonnes of Naphthalene crude alleged — Surveyor opined that alleged fire could not be termed as accident — Had said quantity of chemicals released into environment, it was likely to prove highly hazardous — Nothing of that sort happened — Same raised doubts about fire and alleged loss — Matter cannot be decided merely on affidavits in writ petition — Proper remedy for petitioners is to file civil suit — Writ petition cannot be entertained.

#### **IV (2006) ACC 674 (Bombay HC) (DB)**

##### **GOODS VEHICLE**

Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Passengers travelling in goods vehicle — Basis — FIR — Binding nature of documents — As per contents of FIR, deceased travelling in goods vehicle as passenger — Tribunal held deceased were pedestrians and directed insurer to pay compensation — Hence appeal by insurer — Contention, FIR and other documents relating to criminal case being produced by claimants, will bind them — Acceptable — No duty on part of insurer to prove contents of said documents — In view of adverse documentary evidence placed by claimants, finding of Tribunal cannot be sustained — Set aside — Insurer not liable for death of passengers in good vehicle — Owner liable.

#### **IV (2006) ACC 557 (Karnataka HC)**

##### **GRATUITOUS PASSENGER**

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Terms and Conditions of policy — Proof of — Letting deceased to travel in goods vehicle as passenger — No evidence led by insurer — Entire burden of proving alleged breach of policy lies on insurer — Said burden not discharged — Though strict rules of evidence not applicable, however basic rules are to be followed — Insurer rightly held liable to pay award amount to claimants — Right to insurer to recover said amount by taking out appropriate proceedings against insured, by establishing breach of policy

conditions.

#### **IV (2006) ACC 527 (Bombay HC)**

- Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Passengers travelling in goods vehicle — Basis — FIR — Binding nature of documents — As per contents of FIR, deceased travelling in goods vehicle as passenger — Tribunal held deceased were pedestrians and directed insurer to pay compensation — Hence appeal by insurer — Contention, FIR and other documents relating to criminal case being produced by claimants, will bind them — Acceptable — No duty on part of insurer to prove contents of said documents — In view of adverse documentary evidence placed by claimants, finding of Tribunal cannot be sustained — Set aside — Insurer not liable for death of passengers in good vehicle — Owner liable.

#### **IV (2006) ACC 557 (Karnataka HC)**

##### **HEART ATTACK**

Workmen's Compensation Act, 1923 — Sections 2(n), 3 — 'Workman' — Death arising out of and in course of employment — Proof — Casual connection between accident and employment of deceased — Deceased auto driver — While driving, he suffered severe chest pain, control over vehicle lost and vehicle was upset — Deceased taken to doctor, declared dead — 1st and 2nd opposite parties denied relationship of deceased with them as employer and employee — First O.P. owner failed to prove, by producing his driving licence, that he was owner-cum-driver of auto — Similarly, 2nd O.P. also failed to prove that he was driver employed with O.P. 1 — Absence of any documentary proof from side of O.Ps. — Commissioner rightly concluded deceased was workman as per Act — No point agitated to disprove finding of Commissioner — Evident that accident of employee had casual connection with his employment — Finding that deceased died out of and in course of injuries suffered out of employment, upheld.

#### **IV (2006) ACC 475 (Madras HC)**

##### **IDENTITY OF VEHICLE**

Accident — involvement of vehicle — Proof — Evidence of eye-witnesses — Reliability — Accident while plough being carried in tractor hit deceased scooter rider — Death — Appellants owner and driver denied any accident with their vehicle — Plea of limitation in filing claim petition also taken — Plea rejected — Accident on 25.5.2000 — Claim petition filed on 15.6.2001 — Identity of real culprit disclosed only in June 2001 — Claim petition filed thereafter cannot be said to be belated — Further contention that presence of alleged eye witness not probable — Not accepted — Statement of eye witness duly disclosed details of accident and manner in which it occurred — Witness even identified driver in Court — Testimony of this witness not shaken in cross-examination — Admittedly, no enmity between parties to have falsely implicated appellants — Tribunal rightly held accident and death resulted from rash and negligent driving by truck driver — Appellants liable.

#### **IV (2006) ACC 533 (Punjab & Haryana HC)**

- Motor Vehicles Act, 1988 — Section 140 — No Fault Liability — Compensation towards — Award of — Evidence of eye witness contrary to pleadings in claim petition under Section 166 — Offending vehicle neither available nor identified — Rejection of claim petition under Section 166, may not be unjustified — However, liability under Section 140 not ruled out — Claimants entitled to Rs. 50,000 with interest @ 9% p.a.

#### **IV (2006) ACC 564 (Andhra Pradesh HC)**

##### **INSURABLE INTEREST**

Privity of contract — Vehicle insured in name of M/s. M.G.F. Ltd. and not in that of appellant — No privity of contract between insurer and appellant — In order to bind insurer with liability, it has to be proved that vehicle was under insurance cover, in name of appellant — In absence of same, liability cannot be imposed upon insurer.

#### **IV (2006) ACC 445 (Punjab & Haryana HC)**

## INSURANCE POLICY

Additional evidence — Application for — Insurance cover in name of appellant — Proof — Cover note, sought to be produced, pertains to period subsequent to date of accident — Document, of no help to appellant — Grant of application would be exercise in futility — Rejected.

### IV (2006) ACC 445 (Punjab & Haryana HC)

— Privity of contract — Vehicle insured in name of M/s. M.G.F. Ltd. and not in that of appellant — No privity of contract between insurer and appellant — In order to bind insurer with liability, it has to be proved that vehicle was under insurance cover, in name of appellant — In absence of same, liability cannot be imposed upon insurer.

### IV (2006) ACC 445 (Punjab & Haryana HC)

— Transfer of ownership of vehicle — Bouncing of cheque given by original owner towards premium — Cancellation of cover-note — Vehicle sold to respondent No. 4, present owner — In such circumstances, insurer not liable to indemnify owner — Remedy of present owner lies against previous owner — Award of Tribunal set aside, to extent it directs insurer liable to compensate — Owner of vehicle at relevant time and its driver liable.

### IV (2006) ACC 562 (Himachal Pradesh HC)

## INTEREST

Motor Vehicles Act, 1988 — Section 171 — Granted by way of compensation — Need not be claimed specifically — Same must be reasonable one — In instant case, Single Judge awarded interest @ 12% p.a. — Rate of interest now granted @ 9% p.a. — Under such circumstances, appellant's claim for interest on sum enhanced by Division Bench, cannot be accepted.

### IV (2006) ACC 453 (SC)

— Workmen's Compensation Act, 1923 — Section 4A(3)(a) — Interest on account of Compensation — Liability of insurer — Absence of stipulation regarding non-liability for payment of interest — Unless such stipulation is made, insurer will be held liable for such payment.

### IV (2006) ACC 570 (Rajasthan HC)

— Workmen's Compensation Act, 1923 — Section 4(A)(3)(a) — Interest on account of compensation — Liability of insurer to pay — Failure of employer to make payment of compensation within stipulated time — Same is virtually a statutory liability on insurer — Further, absence of clause in policy specifically providing for exemption of insurer from liability to pay interest — Insurer liable.

### IV (2006) ACC 461 (Punjab & Haryana HC)

— Workmen's Compensation — Quantum — Interest on account of compensation — Deceased aged 56 years, earning Rs. 1,600 — Rs. 1,05,560 found payable — However award restricted for Rs. 84,448 since that much was claimed — Claimant entitled to Rs. 84,448 along with statutory interest payable under Act — Workmen's Compensation Act, 1923 — Sections 3, 4A(3).

### IV (2006) ACC 622 (SC)

— Workmen's Compensation Act, 1923 — Section 4A(3)(a) — Interest on account of compensation — Insurer's liability — Act itself provides for interest on compensation so awarded — Cannot be said that interest would not form part of compensation awarded — Insurer liable to pay interest @ 12% p.a.

### IV (2006) ACC 642 (Allahabad HC) (DB)

## INTERPRETATION OF STATUTES

Explanation — Role of — By inserting explanation in schedule of Act, main provisions of Act cannot be defeated — By reason of explanation, even otherwise, scope and effect of provision cannot be enlarged.

### IV (2006) ACC 628 (SC)

- Harmonious construction — Provisions contained in schedule must be in consonance with substantive provisions in main Act — Executive while fixing rate of duty, not permitted to usurp legislative power and make provision inconsistent with substantive provision of statute.

#### **IV (2006) ACC 628 (SC)**

##### **JURISDICTION**

Workmen's Compensation Act, 1923 — Section 3(5)(b) — Employer's Liability for Compensation — Agreement between parties providing for payment of compensation — Scope of — Any such agreement must be post-accident one, providing for settlement of claim in accordance with provisions of Act — Object underlying Section 3(5)(b) is to prevent litigation post-settlement — After such agreement is arrived at between parties, no suit for damages can be maintained in Civil Court.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

##### **JURISDICTION OF CIVIL COURT**

Workmen's Compensation Act, 1923 — Section 3(5)(b) — Accident arising out of and during course of employment — Employer's liability to compensate — Right of claimants to approach Commissioner under Act or Civil Court — Jurisdiction of Civil Court to award compensation — Contention of employer, claimants could not have approached Civil Court for compensation, only option was to file claim before Commissioner under Act — Rejected — Remedies open to claimants under Act or before Civil Court are in alternative — No provision of Act excludes in specific terms jurisdiction of Civil Court to entertain claim for compensation — No agreement between parties which could possibly keep any claim for damages outside jurisdiction of Civil Court — Compensation rightly awarded by Civil Court.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

##### **JUST COMPENSATION**

Motor Vehicles Act, 1988 — Section 168 — Fatal Accidents Act, 1855 — Sections 1A and 2 — Awarding Just Compensation — Principles of Assessment — Justness of compensation is determined in context of peculiar facts of each case — Loss of estate awardable to legal heirs of deceased even if they are not dependent on him — But loss on account of dependency calculated under Section 1A, payable only to dependents of deceased — Application of multiplier important factor for assessment of compensation — Principles of assessment discussed.

#### **IV (2006) ACC 432 (Gujarat HC) (DB)**

##### **LIABILITY WITHOUT FAULT**

Motor Vehicles Act, 1988 — Section 140 — No Fault Liability — Compensation towards — Applicability of section — Retrospective effect — Though accident occurred prior to coming into force new Act of 1988, yet its provisions apply if appeals pending in Court — In instant case, victim, having suffered injury and permanent disability, was awarded Rs. 9,000 — No further amount due towards compensation — However, in accordance with provisions of Section 140, Rs. 25,000 awarded.

#### **IV (2006) ACC 618 (Punjab & Haryana HC) (DB)**

- Motor Vehicles Act, 1988 — Section 140 — No Fault Liability — Compensation towards — Award of — Evidence of eye witness contrary to pleadings in claim petition under Section 166 — Offending vehicle neither available nor identified — Rejection of claim petition under Section 166, may not be unjustified — However, liability under Section 140 not ruled out — Claimants entitled to Rs. 50,000 with interest @ 9% p.a.

#### **IV (2006) ACC 564 (Andhra Pradesh HC)**

- Motor Vehicles Act, 1988 — Section 140 — No fault liability — Compensation towards — Claimant's application under Section 140 — Rejected since claimant failed to bring latest position about injuries and to make out case of disability as contemplated by Section 140 — Unjustified — Tribunal overlooked medical certificate and contents thereof — Further, intent and

purpose of incorporating said provision also overlooked — Impugned order set aside.

#### **IV (2006) ACC 685 (Bombay HC)**

##### **LIFE INSURANCE**

Group personal Accident Policy — Repudiation of claim — Violation of policy alleged — Delay in giving information regarding death of life insured — Deceased police constable — Policy taken by Police Department — Police headquarters or District Superintendent of Police acted as agent of insurer — Information regarding death received by agent would satisfy said condition of policy — Any default on part of agent in passing on information to insurer, would be dispute between principal and agent — Same not fatal to claim of petitioners — Information to agent must be deemed as information to principal — Plea of violation of policy not available — Insurer liable under policy.

#### **IV (2006) ACC 415 (Patna HC)**

##### **LIMITATION**

Motor Vehicles Act, 1988 — Section 173 — Appeal — Maintainability — Appeal challenging award of Tribunal, claiming enhancement — Filing delayed by 952 days — Contention, ignorance and illiteracy are causes for delay — Appellants participated in proceedings before Tribunal — Received award amount — Must have been in constant touch with their Counsel — Difficult to believe they were not apprised about limitation to file against inadequacy of compensation amount — Delay not condoned — Appeal liable to be dismissed.

#### **IV (2006) ACC 451 (Madhya Pradesh HC) (DB)**

— Motor Vehicles Act, 1988 — Section 166 — Claim Petition — Entertainment of — Petition has to be entertained by Tribunal without taking note of date, on which accident occurred.

#### **IV (2006) ACC 690 (Punjab & Haryana HC)**

— Limitation Act, 1963 — Section 5 — Civil Procedure Code, 1908 — Order 43 Rule 1, Order 9 Rule 13 — Dismissal of application filed under Section 5 of Act of 1963 — Present appeal filed under Rule 1 Order 43 — Maintainability — Tribunal passed *ex parte* order in claim petition, against appellants — Application under Order 9 Rule 13 dismissed as being barred by limitation — Hence present appeal — Dismissal of application on account of limitation has effect of rejection of application under Order 9 Rule 13 — Permissible for aggrieved party to avail remedy of appeal under Order 43 Rule 1 — Appeal maintainable.

#### **IV (2006) ACC 665 (Andhra Pradesh HC)**

##### **LIMITED LIABILITY**

Motor Vehicles Act, 1939 — Section 95(2) — Liability of insurer — Extent of — Applicability of terms of policy — as per limits of liability, mentioned in policy, company liable to pay such amount as necessary to meet requirements of Act of 1939 — As per Section 95(2), liability of insurer in respect of persons other than passengers carried for hire or reward limited to Rs. 50,000 — In present case, deceased was non-passenger — Section 95(2) applicable — Liability of insurer restricted to Rs. 50,000.

#### **IV (2006) ACC 412 (Punjab & Haryana HC)**

— Motor Vehicles Act, 1988 — Section 147(2) — Liability of Insurer — Extent of — Sustainability of plea regarding limited liability — Insurer never raised such plea in reply before lower Courts and never led any evidence — Apparent that insurer never had any such defence that it was case of limited statutory liability — In case liability was limited, required of insurer to have taken specific pleadings and then proved essential facts by necessary evidence — Having failed to do so, insurer liable to satisfy entire award.

#### **IV (2006) ACC 584 (Rajasthan HC)**

— Motor Vehicles Act, 1939 — Section 95(2) [Section 147(2), Motor Vehicles Act, 1988] — Liability of Insurer — Limits of — Accident of bus carrying passengers — Bus insured to extent

of Rs. 2,55,000 and maximum limit of compensation payable was Rs. 4,50,000 in all @ Rs. 15,000 per passenger — Insurer received additional payment @ Rs. 12 per passenger to cover limited liability of 30 passengers — Accident occurred when provisions of Act of 1939 were in force — Liability of insurer limited to Rs. 15,000 per passenger, as per Section 95(2) — Rest of compensation amount to be paid by owner of vehicle — Interest awarded @ 12% p.a. on higher side, reduced to 6% p.a.

#### **IV (2006) ACC 604 (Uttaranchal HC)**

- Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Insurer not took any higher liabilities by accepting any higher premium for payment of compensation to third party — Liability only upto extent as mentioned under Section 95(2) of Act — No liability to pay entire amount — Insurer liable to pay Rs. 50,000.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

##### **LOSS OF EARNING CAPACITY**

Workmen's Compensation Act, 1923 — Schedule I, Part II — Scheduled Injury — Power of Authority to assess loss of earning capacity resulting therefrom — In present case, injury suffered by victim appears at Entry No. 28 — Percentage of loss of earning capacity specified as 11% — No justification for authority in ignoring same and taking 25% as loss of earning capacity — Freedom of Authority in assessing said loss, in respect of scheduled injuries, is completely restricted.

#### **IV (2006) ACC 403 (Andhra Pradesh HC)**

##### **MAINTAINABILITY**

Motor Vehicles Act, 1988 — Sections 168, 173 — Motor Vehicles Rules, 1994 — Rule 242 — Civil Procedure Code, 1908 — Order 41 — Appeal — Single appeal against common award, clubbing 2 separate claim cases — Maintainability — Nothing in Section 173, prohibiting filing of one appeal against such common award — Rather Section 173 read with Section 168 shows that an appeal can be filed against common award on several claims — Appeal maintainable.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

- Motor Vehicles Act, 1988 — Section 166 — Claim Petition — 2 claims by 2 different groups of legal representatives in respect of death of one person — Maintainability — Tribunal passed awards — Appeal by insurer — Payment of compensation twice, on account of death of same person, not permissible — Earlier petition filed by wife and children, second one by second wife — Award passed in second petition deserves to be quashed — Matter remanded to Tribunal — Second wife to be impleaded as party — Directions to distribute and disburse amount amongst claimants after they establish their rights as legal representatives of deceased.

#### **IV (2006) ACC 559 (Gujarat HC)**

- Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Annual income of claimant more than Rs. 40,000 — Maintainability of petition under Section 163A — Clear provision of law that person whose annual income exceeds Rs. 40,000 p.a., is not eligible to make application under Section 163A, by restricting his income to slab of Rs. 40,000 — In present case, income of claimant exceeds said limit — Petition not maintainable.

#### **IV (2006) ACC 513 (Gauhati HC)**

- Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Requirement to plead and establish negligence of driver of offending vehicle — Section 163A provides mechanism for awarding compensation without insisting on proof of negligence — Section takes in its sweep even those cases wherein victim's own negligence leads to causing accident — In present case, victim himself responsible for accident — Suffered injuries too — He can, as injured, maintain application for compensation.

#### **IV (2006) ACC 513 (Gauhati HC)**

- Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Requirement to prove sustaining of permanent disability by victim — Claimant chose to claim compensation under Section 163A — No evidence that any injury resulting in permanent disablement or physical impairment — In absence of such proof, claimant not entitled to claim compensation — Claim petition rightly dismissed as being not maintainable.

#### **IV (2006) ACC 686 (Madhya Pradesh HC)**

- Constitution of India, 1950 — Article 226 — Insurance — Repudiation of claim — Writ petition against — Maintainability — Claim regarding fire accident in chemical factory of petitioner — Burning of 222 mts. of sulphur and 40 tonnes of Naphthalene crude alleged — Surveyor opined that alleged fire could not be termed as accident — Had said quantity of chemicals released into environment, it was likely to prove highly hazardous — Nothing of that sort happened — Same raised doubts about fire and alleged loss — Matter cannot be decided merely on affidavits in writ petition — Proper remedy for petitioners is to file civil suit — Writ petition cannot be entertained.

#### **IV (2006) ACC 674 (Bombay HC) (DB)**

##### **MINIMUM WAGES**

Workmen's Compensation Act, 1923 — Sections 3, 4 — Death of workman during employment — Compensation — Quantum — Absence of valid proof of real wages earned by deceased — Minimum wages payable for drivers to be taken account of — Same arrived at Rs. 1,316 p.m. — Same restricted to Rs. 1,000 as per Section 4(1)(b) Explanation II — Age 35 years — Compensation worked out at  $(Rs. 1,000 \times 40 \times 197.069) \div 100 = Rs. 78,824$  — Award of Commissioner upheld — Since vehicle validly insured, insurer liable to pay compensation amount.

#### **IV (2006) ACC 475 (Madras HC)**

##### **MULTIPLIER**

Deceased 28 years old — Tribunal applied multiplier of 18 — As per Second Schedule, for age group of 25-30, multiplier of 18 appropriate — Tribunal rightly applied said multiplier — Quantum of compensation, so arrived at, upheld.

#### **IV (2006) ACC 458 (Madras HC)**

- Quantum — Fatal — 68 years — Enhancement — Deceased running soap factory along with 2 sons, income alleged at Rs. 10,000 p.m. — Tribunal awarded Rs. 55,000 — Award not justified — Rs. 6,000 can be assessed as independent income of deceased — Dependent widow aged 63 years — Dependency Rs. 3,000 p.m. — Multiplier of 5 applicable — Compensation of Rs. 1,80,000 payable with interest @ 9% p.a.

#### **IV (2006) ACC 575 (Punjab & Haryana HC)**

##### **NEGLIGENCE**

Causing accident by negligent driving — Proof — Plea that accident occurred due to bad slippery condition of road due to rains and fog and not due to negligence — Driver, driving offending vehicle admitted, that though fog was there, but road easily visible and there was no difficulty in driving vehicle — Also admitted that brakes of vehicle were in proper condition — Principles of *res ipsa loquitur* applicable — Negligence of driver concluded — Since fault committed during employment, owner alone liable to pay compensation.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

- Indian Penal Code, 1860 — Section 304A — Criminal Procedure Code, 1973 — Section 360 — Causing Death by Negligence — Applicability of *res ipsa loquitur* — Releasing accused on probation of good conduct or after admonition — Truck, being driven rashly and negligently at high speed, hit deceased, causing him grievous injuries, resulting in death — Testimony of two eye-witnesses quite consistent, supporting prosecution case — Further, accused driver allowed 2 persons to sit on cabin of truck, which was not meant for passengers — He failed to exercise proper care and skill in driving and his conduct in not taking injured persons to hospital — Such

acts of accused amount to culpable rashness and negligence — Speed of truck assumes importance — Negligence of driver proved — Doctrine of *res ipsa loquitur* squarely applicable — Conviction upheld — Benefit of Section 360, Cr.P.C. cannot be granted to accused.

#### **IV (2006) ACC 424 (Bombay HC)**

- Onus to prove — Doctrine of *res ipsa loquitur* — Applicability — Death of workman in injuries suffered during course of employment — Accident in foreign land — Widow and minor children can hardly have access to facts necessary to prove negligence resulting in accident — Employer in possession of best evidence — True that initial onus to prove negligence is upon claimant — In instant case, employer bound to produce best evidence before Court to enable it to take just and fair view of matter — Non-production of such evidence gives rise to adverse inference against him — Contentions of employer that there was no negligence on its part, rightly rejected — Doctrine of *res ipsa loquitur* applicable.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

- Rash and negligent driving — Accident between jeep and car — Tribunal held car driver liable for negligent driving — Challenged by insurer of car — As per evidence, cannot be said no rashness or negligence on part of car driver — Not case of head-on collision — Eye-witness clearly stated that car came on wrong side by overtaking lorry and dashed against jeep — Fixing of liability for such accident on car driver, owner and insurer upheld.

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

- Rash and negligent driving — Appreciation of evidence — Car collided against bridge — Passengers therein suffered injuries — Car driver admitted that he was driving rashly and negligently — FIR, sketch showing manner of accident, report of Motor Vehicles Inspector, Accident Register, etc. helped Tribunal to fix negligence on part of car driver — Finding upheld.

#### **IV (2006) ACC 458 (Madras HC)**

- Indian Penal Code, 1860 — Sections 279, 304A, 337 and 338 — Rash and negligent driving — Causing death thereby — Doctrine of *res ipsa loquitur* — Applicability — Truck carrying passengers turned turtle — Persons suffered fatal and serious injuries — Driver held guilty of offences under Sections 337, 338 and 304A — Finding that truck being driven at “high speed” recorded — No specific finding that truck was driven either rashly or negligently — Mere fact of vehicle being driven at ‘high speed’ does not bespeak of either negligence or rashness by itself — “High speed” is relative term — In absence of any material on record, no presumption of rashness or negligence be drawn by invoking maxim *res ipsa loquitur* — Order of High Court acquitting driver, upheld.

#### **IV (2006) ACC 582 (SC)**

- Rash and negligent driving — Doctrine of *res ipsa loquitur* — Applicability — Truck dashed against victim when he was standing by side of road — No evidence that truck faced any obstruction, which made it to move and come to side of road and hit person standing there — Accident, thus, speaks for itself — Doctrine of *res ipsa loquitur* applies — No evidence that truck had any mechanical defect leading to accident — Conclusion irresistible that truck driver at fault in causing accident.

#### **IV (2006) ACC 500 (Gauhati HC) (DB)**

- Rash and negligent driving — Not slowing down bus to take evasive action despite signal being given — Cyclist turned to his right hand side after giving signal by hand — At this time bus was approximately 100 yards away — Distance good enough for bus driver to slow down, apply brakes and take evasive action — Bus struck against rear portion of cycle showing negligence of bus driver — Accident due to rash and negligent driving by bus driver proved.

#### **IV (2006) ACC 554 (Punjab & Haryana HC)**

- Rash and negligent driving — Proof — Death of motor cyclist on being hit by three-wheeler — Case rests on statement of eye-witness — His statement that, motor cyclist was on correct side of

road whereas, three-wheeler came from opposite side and hit against motor-cycle thereby causing accident — Said witness independent one — He lodged FIR with utmost promptness — Prompt lodging of FIR rules out every possibility of consultations and deliberations — Cannot be said false case registered against impugned driver — Tribunal rightly held him negligent and liable for causing accident.

#### **IV (2006) ACC 578 (Punjab & Haryana HC)**

##### **NEGLIGENCE COMPOSITE**

Apportionment of liability — Legality of — Accident between truck and jeep — Truck driver failed to use dipper so that vehicle from opposite direction could move comfortably — Vehicle being driven at high speed — Duty of truck, heavy vehicle to give space to smaller ones — Statement of jeep driver, truck came in full speed with full lights, due to its headlights, jeep driver's eyes were glazed and, therefore, jeep had to be taken to left of road, as a result it hit tree and got damaged — No objection against such evidence — Tribunal rightly held truck driver responsible upto 90% and jeep driver 10%.

#### **IV (2006) ACC 432 (Gujarat HC) (DB)**

##### **NEGLIGENCE CONTRIBUTORY**

Apportionment of liability — Accident while overtaking ongoing vehicle — Truck coming from opposite direction hit overtaking bus — Bus driver died at spot, injuries to several other passengers — Tribunal held bus driver negligent upto 50%, apportioned liability accordingly — No evidence that deceased took precaution before overtaking ongoing vehicle — Deceased, before overtaking, was supposed to ensure that his overtaking would not be source of danger to other traffic coming from opposite direction — Nothing to show that any steps were taken in such respect — Tribunal rightly concluded that he was equally responsible for accident — Apportionment of liability upheld.

#### **IV (2006) ACC 669 (Punjab & Haryana HC)**

— Award of compensation accordingly — Driver claiming compensation for injury sustained, against owner and insurer of vehicle — Driver found guilty of contributory negligence to extent of 50% — In view of Supreme Court decision in *TNSTC, Tanjore v. Natarajan & Ors.*, liability in such case cannot be fastened on owner or insurer.

#### **IV (2006) ACC 620 (Madras HC)**

— Liability of driver to pay compensation along with owner — Accident between police van and bus — Driver of police vehicle held guilty of contributory negligence — His duty was to drive van carefully — Not his duty to drive van rashly and negligently and causing accident — He being driver of offending vehicle, liable to compensate victims, along with owner.

#### **IV (2006) ACC 624 (Punjab & Haryana HC)**

##### **NOTICE**

Workmen's Compensation Act, 1923 — Section 30 — Appeal against Award of Commissioner — Contention, Commissioner modified award without issuing notice and without giving any opportunity to insurer — Order passed subsequently, does not change either text, context or effect of earlier award — Alleged clarification/modification is nothing but recital of provisions of relevant sections — Not fit case to quash or set aside award.

#### **IV (2006) ACC 642 (Allahabad HC) (DB)**

##### **OBJECT AND REASON**

Motor Vehicles Act, 1988 — Scope and Object — Applying strict rules of evidence — Unjustified — Act, beneficial statute — Purpose is to provide immediate relief in form of just and reasonable compensation to unfortunate accident victims — To take hyper-technical view and apply strict rules of evidence in claims under Motor Vehicles Act, would defeat very purpose and object behind enactment of Act.

#### **IV (2006) ACC 406 (Gujarat HC) (DB)**

##### **ONUS OF PROOF**

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy Conditions — Burden to prove always on insurer — Plea taken by insurer that driver of concerned vehicle did not have valid and effective licence — In appeal, plea taken that victim was gratuitous passenger — Burden to prove breach of policy not discharged — Insurer liable.

#### **IV (2006) ACC 668 (Bombay HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of Terms and Conditions of policy — Proof of — Letting deceased to travel in goods vehicle as passenger — No evidence led by insurer — Entire burden of proving alleged breach of policy lies on insurer — Said burden not discharged — Though strict rules of evidence not applicable, however basic rules are to be followed — Insurer rightly held liable to pay award amount to claimants — Right to insurer to recover said amount by taking out appropriate proceedings against insured, by establishing breach of policy conditions.

#### **IV (2006) ACC 527 (Bombay HC)**

— Negligence — Doctrine of *res ipsa loquitur* — Applicability — Death of workman in injuries suffered during course of employment — Accident in foreign land — Widow and minor children can hardly have access to facts necessary to prove negligence resulting in accident — Employer in possession of best evidence — True that initial onus to prove negligence is upon claimant — In instant case, employer bound to produce best evidence before Court to enable it to take just and fair view of matter — Non-production of such evidence gives rise to adverse inference against him — Contention of employer that there was no negligence on its part, rightly rejected — Doctrine of *res ipsa loquitur* applicable.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

##### **PAY AND RECOVER**

Motor Vehicles Act, 1988 — Section 149(2) — Breach of Terms and Conditions of policy — Proof of — Letting deceased to travel in goods vehicle as passenger — No evidence led by insurer — Entire burden of proving alleged breach of policy lies on insurer — Said burden not discharged — Though strict rules of evidence not applicable, however basic rules are to be followed — Insurer rightly held liable to pay award amount to claimants — Right to insurer to recover said amount by taking out appropriate proceedings against insured, by establishing breach of policy conditions.

#### **IV (2006) ACC 527 (Bombay HC)**

##### **PENALTY**

Workmen's Compensation Act, 1923 — Section 4A(3)(b) — Penalty on Compensation Amount — Imposing penal interest on insurer — Legality of — No provision empowering Commissioner to impose penal interest — In case amount not deposited within stipulated period, penalty can be imposed on employer, not upon insurer — Award of penal interest against insurer unjustified.

#### **IV (2006) ACC 570 (Rajasthan HC)**

##### **PERMIT**

Grant of — Using vehicle without permit — Seizure of vehicle — Imposition of tax — Constitutional validity of Clause (g) of Entry IV of First Schedule of Act of 1991 read with Explanation (7) — Appellants have been granted permit for plying their buses as contract carriage — Allegation against them that conditions of permit violated as they plied vehicles as stage carriage — Owner of vehicle having one kind of permit could not be treated as having no permit at all only because transport authorities had reason to believe violation of conditions of permit — Undoubtedly, permit holder liable to comply with conditions of permit — In case of any violation thereof, law takes its course — Permit granted under Act of 1988 — Consequences for any violation shall be in accordance with Section 192A of Act of 1988 — Tax, in such case, cannot be

imposed by way of penalty, although penalty can be imposed for non-payment of tax or evasion of tax — Appellants have paid tax as specified for in permits granted in their favour as contract carriage — Different rate of tax which is not contemplated under Section 3 of 1991 Act, cannot be imposed as penalty — Aforesaid clause declared unconstitutional — Motor Vehicles Act, 1988 — Sections 66, 72, 74, 192A — Motor Vehicles Rules, 1989 — Rules 85, 85A — Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (as amended by M.P. Motoryan Sanshodhan Adhiniyam, 2004) — First Schedule, Entry IV Clause (g) read with Explanation (7), Sections 2(c), 3, 16.

#### **IV (2006) ACC 628 (SC)**

— Grant of Permit — Violation of terms and conditions thereof — Penal provisions in form of imposition of penalty, contained in Act — Such order of penalty is appellable one — Motor Vehicles Act, 1988 — Sections 66, 72, 74.

#### **IV (2006) ACC 628 (SC)**

— Motor Vehicles Act, 1939 — Sections 47, 57 — Motor Vehicles Act, 1988 — Sections 71, 72, 80, 88 — Constitution of India, 1950 — Articles 19(1)(g) — Motor Vehicles — Grant of Permit — Writ petitions by existing operators, challenging liberalisation in matter of grant of permits — By virtue of provisions of Act of 1988, intended operator can get permit irrespective of number of operators already in field — Scheme under old Act, completely done away with — Right of existing operators to file objections and to impose limits on number of permits taken away — According to petitioners, 23 permit holders already operated on certain route — Authority under Section 80, issued 272 more permits in respect of same route — Petitioners efforted to stop new operators from coming in field — Stand unjustified — Complaint against liberalised policy for grant of permits under Act, not justified — Legislative policy under Act, cannot be challenged.

#### **IV (2006) ACC 650 (SC)**

— “Stage Carriage”, “Contract Carriage” and “Tourist Vehicle” — Defined — Motor Vehicles Act, 1988 — Sections 2(31), 2(40), 2(7), 2(43).

#### **IV (2006) ACC 628 (SC)**

##### **PERSONAL EXPENSES**

Principles of Assessment — Loss of dependency — Deduction towards personal expenses — Deceased unmarried — Normal course in such cases is to deduct half of income towards his personal expenses — No hard and fast rule — Same depends upon number of dependents and to what extent they were depending upon income of deceased — In instant case, dependents included parents, brother and unmarried sister — Tribunal deducted 1/3rd towards personal expenses — Justified — No exception can be taken in approach of Tribunal.

#### **IV (2006) ACC 566 (Chhattisgarh HC) (DB)**

##### **PRINCIPAL EMPLOYER**

Workmen’s Compensation Act, 1923 — Section 12 — Accident arising out of and during course of employment — Entitlement to be compensated — Workman engaged with contractor — Liability of principal employer *vis-a-vis* contractor — As per Section 12, principal employer liable even in respect of worker engaged under contractor if work entrusted with contractor is connected with trade or business of principal employer — In present case, respondent No. 2 is Engineer/Contractor, respondent No. 3 Military Engineering Services is principal employer — Workman was directed to fix notice board on wall of site belonging to Engineer/Contractor — While doing so, wall collapsed, workman died — In case of Defence Department, work of fixing tubelight in signboard, cannot be said to be ordinarily part of trade or business — Cannot be held that principal employer is responsible to make good loss sustained by claimant — Second respondent liable.

#### **IV (2006) ACC 696 (Madras HC)**

##### **PRINCIPLES OF ASSESSMENT**

Adoption of multiplier method — Most accurate method for determining compensation payable for death or injury regardless whether such claim is made under Motor Vehicles Act or under Fatal

Accidents Act — Assessment of compensation accordingly, in instant case, upheld.

**IV (2006) ACC 464 (Delhi HC) (DB)**

- Application of multiplier — Age of deceased relevant — Maximum multiplier of 18 applicable to age group of 20-21 years — Minimum multiplier to be applied to age group of 60-70 years.

**IV (2006) ACC 624 (Punjab & Haryana HC)**

- Awarding whole amount as claimed — Award *ex parte* — Legality — Even when no resistance by owner or insurer of vehicle, obligatory on Tribunal to analyse nature of injuries, amount to be awarded towards pain and suffering, loss of earnings, medical expenses, etc. — Award passed by Tribunal without satisfying itself as to aforesaid factors, unsustainable, set aside.

**IV (2006) ACC 665 (Andhra Pradesh HC)**

- Calculation of dependency — Death of husband — Amount of family pension drawn by widow of deceased, liable to be ignored while calculating compensation payable.

**IV (2006) ACC 601 (Punjab & Haryana HC)**

- Compensation — Deduction of amounts granted under *ex gratia* and group insurance, etc. from compensation amount — *Ex gratia* or some other amount is paid on humanitarian grounds and benevolence — It forms social responsibility of employer or Government — Payment of group insurance or provident fund etc. is from out of mandatory contribution and savings made by deceased — Such payments cannot be deducted from compensation granted by Tribunal under Motor Vehicles Act.

**IV (2006) ACC 592 (Andhra Pradesh HC)**

- Death of wife — Basis of assessing damages payable to husband — Husband may not be dependent on income of his wife — Basis of assessing compensation would be similar — Total award has to be worked out by calculating net pecuniary loss on annual basis and multiplying same by appropriate multiplier — Award accordingly.

**IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

- Entitlement to compensation — 2 sons of deceased aged about 27 and 29 years respectively cannot be treated as dependents of deceased — Their claim rightly rejected by Tribunal.

**IV (2006) ACC 575 (Punjab & Haryana HC)**

- Motor Vehicles Act, 1988 — Section 168 — Fatal Accidents Act, 1855 — Sections 1A and 2 — Awarding Just Compensation — Principles of Assessment — Justness of compensation is determined in context of peculiar facts of each case — Loss of estate awardable to legal heirs of deceased even if they are not dependent on him — But loss on account of dependency calculated under Section 1A, payable only to dependents of deceased — Application of multiplier important factor for assessment of compensation — Principles of assessment discussed.

**IV (2006) ACC 432 (Gujarat HC) (DB)**

- Grounds to deny compensation — Providing compassionate employment to one of dependants of deceased — Same might be one of conditions of service — It cannot be taken as ground to deny compensation to claimants.

**IV (2006) ACC 592 (Andhra Pradesh HC)**

- Loss of dependency — Deduction towards personal expenses — Deceased unmarried — Normal course in such cases is to deduct half of income towards his personal expenses — No hard and fast rule — Same depends upon number of dependents and to what extent they were depending upon income of deceased — In instant case, dependents included parents, brother and unmarried sister — Tribunal deducted 1/3rd towards personal expenses — Justified — No exception can be taken in approach of Tribunal.

**IV (2006) ACC 566 (Chhattisgarh HC) (DB)**

#### **PRIVITY OF CONTRACT**

Insurance Policy — Vehicle insured in name of M/s. M.G.F. Ltd. and not in that of appellant — No privity of contract between insurer and appellant — In order to bind insurer with liability, it has to be proved that vehicle was under insurance cover, in name of appellant — In absence of same, liability cannot be imposed upon insurer.

#### **IV (2006) ACC 445 (Punjab & Haryana HC)**

##### **PROOF**

Indian Penal Code, 1860 — Section 304A — Causing Death by Negligence — Elements required to be proved while attracting provisions of Section 304A — Discussed.

#### **IV (2006) ACC 424 (Bombay HC)**

##### **PUBLIC DOCUMENT**

Evidence — Accident — Proof of death being resulted from injuries sustained therein — Post-mortem report, being public document is admissible in evidence — Death of victim in accident corroborated by evidence of eye-witness and by admission of owner — Finding of Tribunal that death not been proved, set aside — Held, deceased died in said accident.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

##### **QUANTUM FATAL**

Enhancement — Income — Deceased earning Rs. 7,014 — Tribunal while assessing compensation, deducted Rs. 2,275 as amount received towards family pension and took income at Rs. 4,739 — Unjustified — Such amount ought not to be deducted — Compensation to be worked out by taking into consideration monthly salary at Rs. 7,014 — Enhancement accordingly — interest @ 6% p.a. on enhanced amount.

#### **IV (2006) ACC 529 (Gauhati HC) (DB)**

— Minor — Death of minor daughter — Appropriate to award lump sum amount of Rs. 75,000 with interest @ 7.5% p.a.

#### **IV (2006) ACC 554 (Punjab & Haryana HC)**

— Minor — Minimum compensation of Rs. 1,50,000 payable — Entitlement accordingly — Interest @ 6% p.a.

#### **IV (2006) ACC 557 (Karnataka HC)**

##### **QUANTUM FATAL 14 YEARS**

Deceased minor, student of Class VIII, non-earning member — Claimants parents aged about 41 and 38 years, lost their only son — Possible for deceased to have earned at least Rs. 1,500 p.m., had he survived — Pecuniary loss fixed at Rs. 2,70,000 in consideration of age of mother — Amount towards loss of love and affection, funeral expenses, etc. rightly awarded — Award of Rs. 2,91,000 upheld — Interest reduced from 9% to 7.5% p.a.

#### **IV (2006) ACC 573 (Madras HC)**

##### **QUANTUM FATAL 20 YEARS**

Enhancement — Assessment of income, application of proper multiplier — Deceased driver, income alleged at Rs. 1,050 p.m. — No documentary evidence in support — Said figure rightly rejected — Income taken at Rs. 750 p.m. — After deducting 1/3rd, dependency comes to Rs. 500 p.m. — Assessment proper — Tribunal applied multiplier of 14 — Erroneous — Highest multiplier of 18 applicable to age group of 20-21 years — Compensation enhanced accordingly — Claimants entitled to Rs. 1,08,000 in place of Rs. 84,000 with interest @ 6% p.a. from date of filing claim petition till realisation.

#### **IV (2006) ACC 608 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 23 YEARS**

Appeal by owner — Quantum challenged — Claimants mother and brother of deceased — Multiplier of 14 applied — In ordinary cases, multiplier is of 17 — Choice of multiplier quite reasonable, not excessive — Compensation arrived on basis whereof upheld.

#### **IV (2006) ACC 533 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 25 YEARS**

Enhancement — Proper assessment of income — Deceased fruit vendor — Place where he carried business assumes significance — Main road between Gwalior and Bhind — Cannot be said small place or that person selling fruits there cannot earn Rs. 100 per day — Tribunal wrongly assessed income @ Rs. 50 per day — Monthly income can be assessed at Rs. 2,000 — Dependency Rs. 16,000 p.a. — Multiplier of 17 — Rs. 28,000 to be awarded under various other heads — Claimants entitled to Rs. 3 lakh as against Rs. 1,93,100 — Interest @ 6% on enhanced amount.

#### **IV (2006) ACC 410 (Madhya Pradesh HC) (DB)**

##### **QUANTUM FATAL 25-30 YEARS**

Enhancement — Deceased earning Rs. 1,200 p.m. — Family consisted of 2 members — Loss of dependency Rs. 1,200 ÷ 2 — Appropriate multiplier 18 — Adding amount towards loss of consortium, etc. — Claimants entitled to Rs. 1,36,000 in place of Rs. 55,000 awarded by Tribunal.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

##### **QUANTUM FATAL 29-32 YEARS**

Appeal for Enhancement — No amount awarded towards love and affection — Tribunal awarded Rs. 3,07,000 — Multiplier of 17 applied, income assessed at Rs. 2, 200 p.m. — In view of evidence on record, it appears that amount awarded by Tribunal is on higher side — In such circumstances, even if no amount awarded towards love and affection, then too appellant not entitled for any further enhancement.

#### **IV (2006) ACC 448 (Madhya Pradesh HC)**

##### **QUANTUM FATAL 31 YEARS**

Appeal for enhancement — Evidence regarding income of deceased too vague — Approach of Tribunal in discarding same and assessing income at Rs. 15,000 p.a. on notional basis, not faulted — Similarly, application of multiplier of 15 proper — Compensation so awarded upheld — No scope for enhancement of compensation awarded by Tribunal either on account of income of deceased or claimants' dependency assessed by Tribunal or multiplier selected — Award of Rs. 1,52,000 upheld.

#### **IV (2006) ACC 677 (Uttaranchal HC) (DB)**

##### **QUANTUM FATAL 32 YEARS**

Enhancement — Application of proper multiplier — Tribunal applied multiplier of 12 and awarded Rs. 1,50,000 — In view of age of deceased, proper multiplier is 17 — Award amount to be enhanced accordingly — Claimants entitled to Rs. 4,15,000 along with interest.

#### **IV (2006) ACC 601 (Punjab & Haryana HC)**

— Enhancement — Choice of multiplier — Deceased bachelor, doing ice-cream business — Tribunal awarded Rs. 2.5 lakh by applying multiplier of 16 — For age-group of 30-35 years, multiplier of 17 has to be applied — Compensation to be enhanced accordingly — Interest @ 12% p.a. on enhanced amount.

#### **IV (2006) ACC 689 (SC)**

##### **QUANTUM FATAL 35 YEARS**

Enhancement — Deceased doing work of tailoring and stitching — Earning around Rs. 900 p.m. — Tribunal awarded only Rs. 15,000 under Section 92A of Motor Vehicles Act, 1939 — Dependency Rs. 600 p.m. — Multiplier of 15 applicable since deceased left behind 5 minor children — Claimants entitled to Rs. 1,08,000 — Interest reduced from 12% to 7.5% p.a.

#### **IV (2006) ACC 554 (Punjab & Haryana HC)**

— Multiplier — In view of age of deceased, multiplier of 16 applied — Order not faulted — Amount assessed accordingly, upheld — Interest been awarded @ 12% p.a. — No further enhancement.

#### **IV (2006) ACC 624 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 35-36 YEARS**

Appeal by insurer challenging quantum — Deceased more or less settled in employment as Field Officer in Indian Oil Corporation — Income proved at Rs. 29,906 p.m. — Lower Court, after carrying out necessary deductions, arrived at income of Rs. 21,315, applied multiplier of 16 and awarded Rs. 27,73,320 compensation — Contention of insurer, exorbitant multiplicand and higher multiplier adopted, rejected — Compensation not in any way unreasonable — In fact Tribunal not provided anything towards future prospects — Award upheld — However, at behest of claimants themselves, they are ready to accept compensation assessed by applying multiplier of 15 and reducing at half, amount awarded towards non-pecuniary loss — Award modified — Stated at Rs. 25,82,800 in place of Rs. 27,73,320 with interest @ 7.5%.

#### **IV (2006) ACC 613 (Rajasthan HC)**

##### **QUANTUM FATAL 36 YEARS**

Deceased businessman — Sustained injuries in accident — Died during pendency of proceedings before Tribunal — Claim continued by legal representatives — Entitled to amount towards loss of estate, etc. — Annual income of deceased Rs. 53,240 — Multiplier of 14.8 applied — Future loss of earnings Rs. 7,84,400 — Family spent around Rs. 6 lacs towards medical and other expenses — Same supported by evidence of medical officers — Rs. 1 lakh to be awarded as amount towards pain and sufferings — Adding amounts under pecuniary and non-pecuniary heads, amount comes to Rs. 17,10,000 — Compensation rightly assessed — Interest @ 12% p.a. excessive, reduced to 9% p.a.

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

##### **QUANTUM FATAL 40 YEARS**

Deceased lady, labourer, earning Rs. 40 per day — Spouse living — Dependency to be determined at 50% *i.e.*, Rs. 600 p.m. — Multiplier of 15 — Claimants entitled to Rs. 1,20,000 with interest @ 6% p.a.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

— Enhancement — Deceased driver, earning Rs. 1,325 p.m. — Claimants widow, 7 children and father of deceased — Tribunal deducted Rs. 625 and arrived at monthly dependency at Rs. 700 — Departure from normal rule of 1/3rd deduction for personal expenses — No reasons given — Order erroneous — Deceased left behind large family — Rs. 425 to be deducted on said count — Dependency Rs. 900 p.m. — Multiplier of 16 appropriate — Compensation comes to Rs. 1,72,800 — Since deceased negligent upto 50% , claimants entitled to Rs. 86,400 *i.e.*, Rs. 19, 200 over and above amount awarded by Tribunal — Enhanced compensation payable @ 9% p.a.

#### **IV (2006) ACC 669 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 40/50 YEARS**

Deceased employed, earning Rs. 1,260 p.m. — Claimants widow and 3 children — Dependency taken at Rs. 900, multiplier of 8½ applied till age of his retirement — Thereafter, amount of dependency taken at Rs. 500 and multiplier of 7½ — Compensation assessed at Rs. 91,800 + Rs. 45,000 *i.e.*, Rs. 1,36,800 — Multiplier already on higher side — No further enhancement.

#### **IV (2006) ACC 624 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 41 YEARS**

Enhancement — Choice of multiplier — High Court awarded Rs. 4,91,600 by applying multiplier of 12 — Proper multiplier, as per Second Schedule of Motor Vehicles Act, in view of age of deceased is 15 — Loss of dependency Rs. 5,89,500 — Further sum of Rs. 20,000 to be awarded

towards loss of companionship — Compensation enhanced to Rs. 6,09,500, payable with interest @ 12% p.a.

#### **IV (2006) ACC 695 (SC)**

— Reduction — Higher multiplier adopted — Award excessive — Compensation awarded on basis of applying multiplier of 14 — Principles governing applicability of appropriate multiplier discussed — Hence, multiplier of 14 could not have been applied in view of age of deceased — Multiplier of 11 applicable — Compensation accordingly reduced to Rs. 2,80,000 in place of Rs. 3,71,000 — Interest also reduced from 12% p.a. to 9% p.a.

#### **IV (2006) ACC 679 (Bombay HC)**

##### **QUANTUM FATAL 55 YEARS**

Legality of award — Appeal by insurer challenging quantum of compensation as excessive — Deceased Poojari in temple as well as Post Master — Income Rs. 4004 p.m. — Deducting 1/3rd towards personal expenses — Family of deceased consisted of wife and 5 children — Multiplier of 11 applied — Pecuniary loss Rs. 3,52,352 — Rs. 20,000 awarded to wife towards loss of consortium and Rs. 10,000 each in favour of children towards loss of love and affection — Award of Rs. 4,25,352 rightly passed — No valid ground for interference.

#### **IV (2006) ACC 567 (Madras HC)**

##### **QUANTUM FATAL 60 YEARS**

Appeal for Enhancement — Deceased labourer, earning Rs. 35-40 per day — Admittedly, deceased not working regularly — Dependency cannot be more than 50% — Multiplier of 8 — Claimants entitled to Rs. 50,000 with interest @ 6% p.a.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

##### **QUANTUM FATAL 68 YEARS**

Enhancement — Deceased running soap factory along with 2 sons, income alleged at Rs. 10,000 p.m. — Tribunal awarded Rs. 55,000 — Award not justified — Rs. 6,000 can be assessed as independent income of deceased — Dependent widow aged 63 years — Dependency Rs. 3,000 p.m. — Multiplier of 5 applicable — Compensation of Rs. 1,80,000 payable with interest @ 9% p.a.

#### **IV (2006) ACC 575 (Punjab & Haryana HC)**

##### **QUANTUM PERSONAL INJURY**

Amount towards mental agony and physical pain — Claimant motorcycle rider sustained injuries on being hit by car — 43% permanent disability sustained — Tribunal awarded total compensation of Rs. 1,39,000 under various heads — For loss of earning capacity, physical pain and mental agony, lumpsum compensation amounting to Rs. 70,000 has been awarded — This amount and that on other heads is just, legal and proper — Award upheld.

#### **IV (2006) ACC 450 (Rajasthan HC)**

— Appeal for enhancement — No proof of victim having suffered any permanent disablement — Rs. 30,000 awarded by Tribunal towards physical disablement reasonable and just — Not fit case for enhancement.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

— Appeal for enhancement — Permanent disability suffered — Victim may have to engage driver to drive his car in future — Division Bench awarded compensation @ Rs.700/- p.m. towards said purpose, besides awarding Rs. 2,90,000/- with interest @ 12% p.a. — Present appeal for enhancement of award under said head — Appellant failed to prove that he bought car — Even on date of accident, he was merely riding on scooter — No evidence to show that at that point of time, he could afford car — Division Bench more than generous in awarding compensation towards same — No further enhancement.

**IV (2006) ACC 453 (SC)**

- Award questioned — Contention, excessive compensation awarded — Victim minor, aged 12 years — Leg crushed, multiple fractures, skin grafting done, movement of leg restricted — Disability assessed at 19.40% — Victim remained as in-patient for many days, underwent surgery — Rs. 33,750 towards disability, neither excessive nor unreasonable — Further, award of Rs. 18,140.86 towards medical bills, Rs. 250 transport expenses, Rs. 1,000 for nutritious food and Rs. 5,000 for pain and suffering, *i.e.*, altogether Rs. 58,140 justified — Award upheld.

**IV (2006) ACC 580 (Madras HC)**

- Enhancement — 100% functional disability — Tribunal failed to award compensation towards loss of future earning capacity, loss of amenities and for future medical treatment — Victim mechanic — Unable to move upper and lower limbs, to hold bigger objects — Income of victim Rs. 3,000 p.m. — Future loss of earnings to be worked out by applying proper multiplier of 14 — Same comes to Rs. 3,36,000 — Rs. 40,000 towards loss of amenities and Rs. 30,000 towards future medical expenses — Amount enhanced by Rs. 4,06,000 — Same payable over and above amount awarded by Tribunal — 30% to be deducted towards contributory negligence of victim.

**IV (2006) ACC 487 (DB)**

- Enhancement — Amount towards permanent disability — Leg injured — Amputation of lower limb through mid thigh — Disability 85% — Tribunal awarded Rs. 25,000 towards same — Amount meagre — Enhanced to Rs. 40,000 — Amount under other heads appropriate — Claimant entitled to Rs. 86,000 which is Rs. 15,000 over and above amount awarded by Tribunal — Interest @ 9% p.a. on enhanced sum.

**IV (2006) ACC 669 (Punjab & Haryana HC)**

- Enhancement — Extensive large sized wound on leg with muscles exposed and crushed — Amputated below knee — Disability to extent of 70% — Tribunal awarded Rs. 5 lacs with interest @ 12% p.a. — Looking to seriousness of injuries, long treatment, claimants must have undergone great pain, shock and suffering — Artificial limb will have to be replaced after every 2 years — Amount needs to be enhanced — Amount towards pain and suffering enhanced to Rs. 1,25,000, expenses for buying limbs increased to Rs. 1,20,000, loss of future earnings increased to Rs. 4,99,800 — Claimant entitled to enhanced compensation of Rs. 2,95,550 with interest @ 12% p.a.

**IV (2006) ACC 432 (Gujarat HC) (DB)**

- Enhancement — Grievous injuries on legs and waist suffered, causing multiple fractures — Victim can hardly walk without crutches — Permanent disablement in moving leg — Tribunal awarded Rs. 1,01,000 towards medicines, diets, transportation, etc. and Rs. 10,000 towards mental sufferings — Amount inadequate — Fact of incurring permanent disability cannot be ignored — Rs. 50,000 to be awarded towards same — Considering totality of circumstances appropriate to enhance amount to Rs. 20,000 towards pain and sufferings — Claimant entitled to Rs. 1,71,000 with interest @ 6% p.a.

**IV (2006) ACC 683 (Madhya Pradesh HC)**

- Enhancement — Not fit case — Claimant hospitalised only for one day — No material to show that any grave or serious injury suffered — Award of Tribunal granting Rs. 25,000 just and proper.

**IV (2006) ACC 513 (Gauhati HC)**

- Enhancement — Re-examination of facts and evidence — Victim suffered fracture, dislocation of joint with head injuries — Total body disability assessed at 40% — Tribunal awarded Rs. 1,90,000 — Amount needs enhancement — Rs. 40,000 to be awarded towards pain and agony, Rs. 1,10,000 for medical expenses, Rs. 40,000 for loss of amenities and discomfort — Rs. 2,30,400 towards loss of future income and Rs. 15,000 towards loss of income for laidup period — Claimant entitled to Rs. 4,35,000, with interest @ 6% p.a. on enhanced amount.

**IV (2006) ACC 472 (Karnataka HC)**

- Enhancement — Non-pecuniary damages — Amount towards expenses for keeping attendant — Award of — After accident, claimant completely paralysed concerning lower part of body, unable to work and earn anything and maintain his family — Wife and 3 minor children dependent on him — Claimant's evidence credited by medical expert's evidence — Tribunal rightly awarded amount towards loss of income at Rs. 10,36,800 — Rs. 30,275 as conveyance charges for receiving medical treatment also awarded — Rs. 1,15,200 towards mental shock, pain and sufferings also rightly awarded — No sum awarded towards attendant charges — Claimant was rendered almost entirely incapable of doing anything — employment of person to look after him as attendant needed — Rs. 1,00,000 lump sum adequate amount for this purpose — Award amount enhanced accordingly.

#### **IV (2006) ACC 500 (Gauhati HC) (DB)**

- Quantum — Injury — Enhancement — 3 Simple injuries sustained along with damage to vehicle — Tribunal, awarded Rs. 1,000 per injury — Award, to this extent, upheld — Regarding damage to vehicle, award of Rs. 52,400 denied since registration certificate or power of attorney not produced — During pendency of appeal, same produced, taken on record — Claimant entitled to Rs. 52,400 in addition to Rs. 3,000 — Same to be awarded without interest since appellants himself failed to produce documents before Tribunal.

#### **IV (2006) ACC 577 (Rajasthan HC)**

##### **REGISTRATION CERTIFICATE**

Motor Vehicles Act, 1988 — Section 40 — Registration of Vehicle — Place — Imposing condition regarding registration of vehicle at particular place where petitioner carries on business — Legality — Order neither illegal nor arbitrary, unfair, unreasonable — Upheld.

#### **IV (2006) ACC 663 (Calcutta HC)**

##### **RES IPSA LOQUITUR**

Indian Penal Code, 1860 — Section 304A — Criminal Procedure Code, 1973 — Section 360 — Causing Death by Negligence — Applicability of *res ipsa loquitur* — Releasing accused on probation of good conduct or after admonition — Truck, being driven rashly and negligently at high speed, hit deceased, causing him grievous injuries, resulting in death — Testimony of two eye-witnesses quite consistent, supporting prosecution case — Further, accused driver allowed 2 persons to sit on cabin of truck, which was not meant for passengers — He failed to exercise proper care and skill in driving and his conduct in not taking injured persons to hospital — Such acts of accused amount to culpable rashness and negligence — Speed of truck assumes importance — Negligence of driver proved — Doctrine of *res ipsa loquitur* squarely applicable — Conviction upheld — Benefit of Section 360, Cr.P.C. cannot be granted to accused.

#### **IV (2006) ACC 424 (Bombay HC)**

- Negligence — Causing accident by negligent driving — Proof — Plea that accident occurred due to bad slippery condition of road due to rains and fog and not due to negligence — Driver, driving offending vehicle admitted, that though fog was there, but road easily visible and there was no difficulty in driving vehicle — Also admitted that brakes of vehicle were in proper condition — Principles of *res ipsa loquitur* applicable — Negligence of driver concluded — Since fault committed during employment, owner alone liable to pay compensation.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

- Negligence — Onus to prove — Doctrine of *res ipsa loquitur* — Applicability — Death of workman in injuries suffered during course of employment — Accident in foreign land — Widow and minor children can hardly have access to facts necessary to prove negligence resulting in accident — Employer in possession of best evidence — True that initial onus to prove negligence is upon claimant — In instant case, employer bound to produce best evidence before Court to enable it to take just and fair view of matter — Non-production of such evidence gives rise to adverse inference against him — Contentions of employer that there was no negligence on its part, rightly rejected — Doctrine of *res ipsa loquitur* applicable.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

- Indian Penal Code, 1860 — Sections 279, 304A, 337 and 338 — Negligence — Rash and negligent driving — Causing death thereby — Doctrine of *res ipsa loquitur* — Applicability — Truck carrying passengers turned turtle — Persons suffered fatal and serious injuries — Driver held guilty of offences under Sections 337, 338 and 304A — Finding that truck being driven at “high speed” recorded — No specific finding that truck was driven either rashly or negligently — Mere fact of vehicle being driven at ‘high speed’ does not bespeak of either negligence or rashness by itself — “High speed” is relative term — In absence of any material on record, no presumption of rashness or negligence be drawn by invoking maxim *res ipsa loquitur* — Order of High Court acquitting driver, upheld.

#### **IV (2006) ACC 582 (SC)**

- Negligence — Rash and negligent driving — Doctrine of *res ipsa loquitur* — Applicability — Truck dashed against victim when he was standing by side of road — No evidence that truck faced any obstruction, which made it to move and come to side of road and hit person standing there — Accident, thus, speaks for itself — Doctrine of *res ipsa loquitur* applies — No evidence that truck had any mechanical defect leading to accident — Conclusion irresistible that truck driver at fault in causing accident.

#### **IV (2006) ACC 500 (Gauhati HC) (DB)**

##### **RETROSPECTIVELY**

Motor Vehicles Act, 1988 — Section 140 — No Fault Liability — Compensation towards — Applicability of section — Retrospective effect — Though accident occurred prior to coming into force new Act of 1988, yet its provisions apply if appeals pending in Court — In instant case, victim, having suffered injury and permanent disability, was awarded Rs. 9,000 — No further amount due towards compensation — However, in accordance with provisions of Section 140, Rs. 25,000 awarded.

#### **IV (2006) ACC 618 (Punjab & Haryana HC) (DB)**

##### **REVIEW**

Workmen’s Compensation Act, 1923 — Section 30 — Appeal against Award of Commissioner — Contention, Commissioner modified award without issuing notice and without giving any opportunity to insurer — Order passed subsequently, does not change either text, context or effect of earlier award — Alleged clarification/modification is nothing but recital of provisions of relevant sections — Not fit case to quash or set aside award.

#### **IV (2006) ACC 642 (Allahabad HC) (DB)**

##### **ROAD TAX**

Seizure of Vehicle — Imposition of tax — If vehicle is roadworthy and can be plied on road, tax may be imposed — If vehicle not capable of being plied on road, no tax leviable — Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 — Sections 3, 16(6).

#### **IV (2006) ACC 628 (SC)**

##### **SCHEDULED INJURY**

Workmen’s Compensation Act, 1923 — Schedule I, Part II — Scheduled Injury — Power of Authority to assess loss of earning capacity resulting therefrom — In present case, injury suffered by victim appears at Entry No. 28 — Percentage of loss of earning capacity specified as 11% — No justification for authority in ignoring same and taking 25% as loss of earning capacity — Freedom of Authority in assessing said loss, in respect of scheduled injuries, is completely restricted.

#### **IV (2006) ACC 403 (Andhra Pradesh HC)**

##### **SPEED**

Indian Penal Code, 1860 — Sections 279, 304A, 337 and 338 — Negligence — Rash and

negligent driving — Causing death thereby — Doctrine of *res ipsa loquitur* — Applicability — Truck carrying passengers turned turtle — Persons suffered fatal and serious injuries — Driver held guilty of offences under Sections 337, 338 and 304A — Finding that truck being driven at “high speed” recorded — No specific finding that truck was driven either rashly or negligently — Mere fact of vehicle being driven at ‘high speed’ does not bespeak of either negligence or rashness by itself — “High speed” is relative term — In absence of any material on record, no presumption of rashness or negligence be drawn by invoking maxim *res ipsa loquitur* — Order of High Court acquitting driver, upheld.

#### **IV (2006) ACC 582 (SC)**

##### **STATUTORY LIABILITY**

Workmen’s Compensation Act, 1923 — Section 17 - “Contracting Out” — Workman not permitted to contract out of and to waive liability of employer under Act — However, employer and insurer are free to contract terms of insurance as per their own volition.

#### **IV (2006) ACC 570 (Rajasthan HC)**

##### **STRUCTURED COMPENSATION**

Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Annual income of claimant more than Rs. 40,000 — Maintainability of petition under Section 163A — Clear provision of law that person whose annual income exceeds Rs. 40,000 p.a., is not eligible to make application under Section 163A, by restricting his income to slab of Rs. 40,000 — In present case, income of claimant exceeds said limit — Petition not maintainable.

#### **IV (2006) ACC 513 (Gauhati HC)**

— Motor Vehicles Act, 1988 — Section 163A — Claim Petition — Requirement to plead and establish negligence of driver of offending vehicle — Section 163A provides mechanism for awarding compensation without insisting on proof of negligence — Section takes in its sweep even those cases wherein victim’s own negligence leads to causing accident — In present case, victim himself responsible for accident — Suffered injuries too — He can, as injured, maintain application for compensation.

#### **IV (2006) ACC 513 (Gauhati HC)**

##### **SURVIVOR OF CAUSE OF ACTION**

Motor Vehicles Act, 1988 — Section 166 — Indian Succession Act, 1925 — Section 306 — Action for personal injuries — Action does not survive and does not pass over to his legal representatives — However, claim under Act also relates to estate of deceased, such part of action survives on death of claimant and passes over to his legal representatives.

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

— Quantum — Personal injury — Appeal by insurer challenging quantum — Death of victim during pendency of petition for reason other than injuries sustained in accident — Entitlement of legal representatives only to compensation for loss to estate — Tribunal awarded Rs. 1,71,000 — Erroneous — Claimants entitled to Rs. 52,000 with interest @ 6% p.a.

#### **IV (2006) ACC 394 (Karnataka HC)**

##### **TRANSFER**

Motor Vehicles Act, 1988 — Section 157 — Transfer of Certificate of Insurance — Liability of insurer — Vehicle transferred — Subsequent owner obtained insurance coverage, while vehicle already stood under insurance with another insurer — Tribunal held both Insurance Companies jointly and severally liable — Hence appeal — No provision in Act which permits vehicle to be insured by two different insurance companies — In instant case, since transferee obtained fresh insurance policy, existing policy stands terminated and ceases to be operative — In such situation, company, with whom vehicle insured afresh after transfer of ownership of vehicle, shall alone be liable to pay compensation.

#### **IV (2006) ACC 589 (Jharkhand HC) (DB)**

##### **TRANSFER OF INSURANCE**

Insurance Policy — Transfer of ownership of vehicle — Bouncing of cheque given by original owner towards premium — Cancellation of cover-note — Vehicle sold to respondent No. 4, present owner — In such circumstances, insurer not liable to indemnify owner — Remedy of present owner lies against previous owner — Award of Tribunal set aside, to extent it directs insurer liable to compensate — Owner of vehicle at relevant time and its driver liable.

#### **IV (2006) ACC 562 (Himachal Pradesh HC)**

— Motor Vehicles Act, 1988 — Section 157 — Transfer of Certificate of Insurance — Liability of insurer — Vehicle transferred — Subsequent owner obtained insurance coverage, while vehicle already stood under insurance with another insurer — Tribunal held both Insurance Companies jointly and severally liable — Hence appeal — No provision in Act which permits vehicle to be insured by two different insurance companies — In instant case, since transferee obtained fresh insurance policy, existing policy stands terminated and ceases to be operative — In such situation, company, with whom vehicle insured afresh after transfer of ownership of vehicle, shall alone be liable to pay compensation.

#### **IV (2006) ACC 589 (Jharkhand HC) (DB)**

##### **VALUATION**

Motor Vehicles Act, 1988 — Section 173 — Madras High Court Appellate Side Rules, 1965 — Order 1 Rules 1(6)(a) and 2(5)(c) — Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Sections 52 and 53 — Appeal — Subject matter of appeal — Valuation of — Placing of appeals before Single Judge or Division Bench of this Court — “Value of subject matter of appeal” means value of relief refused or granted which is appealed against plus interest if any, that accrued pending proceedings — If such value is Rs. 15,00,000 or upwards, appeal is to be placed before Division Bench and in case it is less than Rs. 15,00,000, appeal to be placed before Single Judge.

#### **IV (2006) ACC 395 (Madras HC)**

##### **WAGES**

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##### **‘WORKMAN’**

Workmen’s Compensation Act, 1923 — Sections 2(n), 3 — Death arising out of and in course of employment — Proof — Casual connection between accident and employment of deceased — Deceased auto driver — While driving, he suffered severe chest pain, control over vehicle lost and vehicle was upset — Deceased taken to doctor, declared dead — 1st and 2nd opposite parties denied relationship of deceased with them as employer and employee — First O.P. owner failed to prove, by producing his driving licence, that he was owner-cum-driver of auto — Similarly, 2nd O.P. also failed to prove that he was driver employed with O.P. 1 — Absence of any documentary proof from side of O.Ps. — Commissioner rightly concluded deceased was workman as per Act — No point agitated to disprove finding of Commissioner — Evident that accident of employee had casual connection with his employment — Finding that deceased died out of and in course of injuries suffered out of employment, upheld.

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#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

### **Limitation Act, 1963**

**Section 5** — Civil Procedure Code, 1908 — Order 43 Rule 1, Order 9 Rule 13 — Limitation — Dismissal of application filed under Section 5 of Act of 1963 — Present appeal filed under Rule 1 Order 43 — Maintainability — Tribunal passed *ex parte* order in claim petition, against appellants — Application under Order 9 Rule 13 dismissed as being barred by limitation — Hence present appeal — Dismissal of application on account of limitation has effect of rejection of application under Order 9 Rule 13 — Permissible for aggrieved party to avail remedy of appeal under Order 43 Rule 1 — Appeal maintainable.

### **IV (2006) ACC 665 (Andhra Pradesh HC)**

#### **Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991**

— Seizure of Vehicle — Imposition of tax — If vehicle is roadworthy and can be plied on road, tax may be imposed — If vehicle not capable of being plied on road, no tax leviable — **Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 — Sections 3, 16(6).**

### **IV (2006) ACC 628 (SC)**

#### **Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (as amended by M.P. Motoryan Sanshodhan Adhiniyam, 2004)**

— Permit — Grant of — Using vehicle without permit — Seizure of vehicle — Imposition of tax — Constitutional validity of Clause (g) of Entry IV of First Schedule of Act of 1991 read with Explanation (7) — Appellants have been granted permit for plying their buses as contract carriage — Allegation against them that conditions of permit violated as they plied vehicles as stage carriage — Owner of vehicle having one kind of permit could not be treated as having no permit at all only because transport authorities had reason to believe violation of conditions of permit — Undoubtedly, permit holder liable to comply with conditions of permit — In case of any violation thereof, law takes its course — Permit granted under Act of 1988 — Consequences for any violation shall be in accordance with Section 192A of Act of 1988 — Tax, in such case, cannot be imposed by way of penalty, although penalty can be imposed for non-payment of tax or evasion of tax — Appellants have paid tax as specified for in permits granted in their favour as contract carriage — Different rate of tax which is not contemplated under Section 3 of 1991 Act, cannot be imposed as penalty — Aforesaid clause declared unconstitutional — Motor Vehicles Act, 1988 — Sections 66, 72, 74, 192A — Motor Vehicles Rules, 1989 — Rules 85, 85A — **Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (as amended by M.P. Motoryan Sanshodhan Adhiniyam, 2004) — First Schedule, Entry IV Clause (g) read with Explanation (7), Sections 2(c), 3, 16.**

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permit holders already operated on certain route — Authority under Section 80, issued 272 more permits in respect of same route — Petitioners effected to stop new operators from coming in field — Stand unjustified — Complaint against liberalised policy for grant of permits under Act, not justified — Legislative policy under Act, cannot be challenged.

#### **IV (2006) ACC 650 (SC)**

— **Section 95(2)** — Liability of insurer — Extent of — Applicability of terms of policy — as per limits of liability, mentioned in policy, company liable to pay such amount as necessary to meet requirements of Act of 1939 — As per Section 95(2), liability of insurer in respect of persons other than passengers carried for hire or reward limited to Rs. 50,000 — In present case, deceased was non-passenger — Section 95(2) applicable — Liability of insurer restricted to Rs. 50,000.

#### **IV (2006) ACC 412 (Punjab & Haryana HC)**

— **Section 95(2)** — Liability of Insurer — Limits of — Insurer not took any higher liabilities by accepting any higher premium for payment of compensation to third party — Liability only upto extent as mentioned under Section 95(2) of Act — No liability to pay entire amount — Insurer liable to pay Rs. 50,000.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

— **Section 110B** — Compensation — Adjustment of amount already paid — Owner paid Rs. 21,600 to claimants — Same shall be adjustable towards payment of compensation.

#### **IV (2006) ACC 597 (Uttaranchal HC)**

##### **Motor Vehicles Act, 1939=Motor Vehicles Act, 1988**

**Section 95(2) [Section 147(2), Motor Vehicles Act, 1988]** — Liability of Insurer — Limits of — Accident of bus carrying passengers — Bus insured to extent of Rs. 2,55,000 and maximum limit of compensation payable was Rs. 4,50,000 in all @ Rs. 15,000 per passenger — Insurer received additional payment @ Rs. 12 per passenger to cover limited liability of 30 passengers — Accident occurred when provisions of Act of 1939 were in force — Liability of insurer limited to Rs. 15,000 per passenger, as per Section 95(2) — Rest of compensation amount to be paid by owner of vehicle — Interest awarded @ 12% p.a. on higher side, reduced to 6% p.a.

#### **IV (2006) ACC 604 (Uttaranchal HC)**

##### **Motor Vehicles Act, 1988**

— “Permit”, “Stage Carriage”, “Contract Carriage” and “Tourist Vehicle” — Defined — **Motor Vehicles Act, 1988** — **Sections 2(31), 2(40), 2(7), 2(43).**

#### **IV (2006) ACC 628 (SC)**

— **Section 40** — Registration of Vehicle — Place — Imposing condition regarding registration of vehicle at particular place where petitioner carries on business — Legality — Order neither illegal nor arbitrary, unfair, unreasonable — Upheld.

#### **IV (2006) ACC 663 (Calcutta HC)**

— Grant of Permit — Violation of terms and conditions thereof — Penal provisions in form of imposition of penalty, contained in Act — Such order of penalty is appellable one — **Motor Vehicles Act, 1988** — **Sections 66, 72, 74.**

#### **IV (2006) ACC 628 (SC)**

— Permit — Grant of — Using vehicle without permit — Seizure of vehicle — Imposition of tax — Constitutional validity of Clause (g) of Entry IV of First Schedule of Act of 1991 read with Explanation (7) — Appellants have been granted permit for plying their buses as contract carriage — Allegation against them that conditions of permit violated as they plied vehicles as stage carriage — Owner of vehicle having one kind of permit could not be treated as having no permit at all only because transport authorities had reason to believe violation of conditions of permit — Undoubtedly, permit holder liable to comply with conditions of permit — In case of any violation thereof, law takes its course — Permit granted under Act of 1988 — Consequences for any

violation shall be in accordance with Section 192A of Act of 1988 — Tax, in such case, cannot be imposed by way of penalty, although penalty can be imposed for non-payment of tax or evasion of tax — Appellants have paid tax as specified for in permits granted in their favour as contract carriage — Different rate of tax which is not contemplated under Section 3 of 1991 Act, cannot be imposed as penalty — Aforesaid clause declared unconstitutional — **Motor Vehicles Act, 1988 — Sections 66, 72, 74, 192A** — Motor Vehicles Rules, 1989 — Rules 85, 85A — Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (as amended by M.P. Motoryan Sanshodhan Adhiniyam, 2004) — First Schedule, Entry IV Clause (g) read with Explanation (7), Sections 2(c), 3, 16.

#### **IV (2006) ACC 628 (SC)**

- Motor Vehicles Act, 1939 — Sections 47, 57 — **Motor Vehicles Act, 1988 — Sections 71, 72, 80, 88** — Constitution of India, 1950 — Articles 19(1)(g) — Motor Vehicles — Grant of Permit — Writ petitions by existing operators, challenging liberalisation in matter of grant of permits — By virtue of provisions of Act of 1988, intended operator can get permit irrespective of number of operators already in field — Scheme under old Act, completely done away with — Right of existing operators to file objections and to impose limits on number of permits taken away — According to petitioners, 23 permit holders already operated on certain route — Authority under Section 80, issued 272 more permits in respect of same route — Petitioners efforted to stop new operators from coming in field — Stand unjustified — Complaint against liberalised policy for grant of permits under Act, not justified — Legislative policy under Act, cannot be challenged.

#### **IV (2006) ACC 650 (SC)**

- **Section 83** — Central Motor Vehicles Rules, 1989 — Rule 93 — West Bengal Motor Vehicles Rules, 1989 — Rule 153 — Replacement of Vehicles — Imposition of conditions — Legality — Condition regarding specifications of concerned vehicle *viz.*, width and gangway, while permitting him to replace his existing motor vehicle, not arbitrary or unreasonable.

#### **IV (2006) ACC 663 (Calcutta HC)**

- **Section 140** — No fault liability — Compensation towards — Claimant's application under Section 140 — Rejected since claimant failed to bring latest position about injuries and to make out case of disability as contemplated by Section 140 — Unjustified — Tribunal overlooked medical certificate and contents thereof — Further, intent and purpose of incorporating said provision also overlooked — Impugned order set aside.

#### **IV (2006) ACC 685 (Bombay HC)**

- **Section 140** — No Fault Liability — Compensation towards — Award of — Evidence of eye witness contrary to pleadings in claim petition under Section 166 — Offending vehicle neither available nor identified — Rejection of claim petition under Section 166, may not be unjustified — However, liability under Section 140 not ruled out — Claimants entitled to Rs. 50,000 with interest @ 9% p.a.

#### **IV (2006) ACC 564 (Andhra Pradesh HC)**

- **Section 140** — No Fault Liability — Compensation towards — Applicability of section — Retrospective effect — Though accident occurred prior to coming into force new Act of 1988, yet its provisions apply if appeals pending in Court — In instant case, victim, having suffered injury and permanent disability, was awarded Rs. 9,000 — No further amount due towards compensation — However, in accordance with provisions of Section 140, Rs. 25,000 awarded.

#### **IV (2006) ACC 618 (Punjab & Haryana HC) (DB)**

- **Section 147(1)** — Liability of Insurer — Passengers travelling in goods vehicle — Basis — FIR — Binding nature of documents — As per contents of FIR, deceased travelling in goods vehicle as passenger — Tribunal held deceased were pedestrians and directed insurer to pay compensation — Hence appeal by insurer — Contentions, FIR and other documents relating to criminal case being produced by claimants, will bind them — Acceptable — No duty on part of insurer to prove contents of said documents — In view of adverse documentary evidence placed by claimants, finding of Tribunal cannot be sustained — Set aside — Insurer not liable for death of passengers in

good vehicle — Owner liable.

#### **IV (2006) ACC 557 (Karnataka HC)**

- **Sections 147(1) and 149(2)** — Breach of Policy — Failure to prove — FIR — Reliability — As per FIR, accident and consequent death of victims occurred while they were travelling in truck — Rule of law that FIR not substantive piece of evidence — Maker of FIR was examined, and he contradicted story narrated in FIR — No other document produced by insurer to prove that at relevant time deceased were travelling in truck — Clear statement of claimants that truck driven negligently, turned turtle at spot where deceased were standing — Court bound to accept evidence of claimants — Insurer failed to prove breach of policy by owner of truck that it carried passengers — Liability joint and several to pay compensation.

#### **IV (2006) ACC 548 (Madhya Pradesh HC) (DB)**

- **Section 147(2)** — Liability of Insurer — Extent of — Sustainability of plea regarding limited liability — Insurer never raised such plea in reply before lower Courts and never led any evidence — Apparent that insurer never had any such defence that it was case of limited statutory liability — In case liability was limited, required of insurer to have taken specific pleadings and then proved essential facts by necessary evidence — Having failed to do so, insurer liable to satisfy entire award.

#### **IV (2006) ACC 584 (Rajasthan HC)**

- **Section 149(2)** — Breach of Terms and Conditions of policy — Proof of — Letting deceased to travel in goods vehicle as passenger — No evidence led by insurer — Entire burden of proving alleged breach of policy lies on insurer — Said burden not discharged — Though strict rules of evidence not applicable, however basic rules are to be followed — Insurer rightly held liable to pay award amount to claimants — Right to insurer to recover said amount by taking out appropriate proceedings against insured, by establishing breach of policy conditions.

#### **IV (2006) ACC 527 (Bombay HC)**

- **Section 149(2)** — Driving Licence — Validity — Relevance of issue — Question as to whether licence of driver valid, becomes relevant only when there is no dispute as to who drove vehicle — Examination of official from RTA, hardly helps matter, as long as dispute existed as to identity of driver.

#### **IV (2006) ACC 610 (Andhra Pradesh HC)**

- **Section 149(2)** — Breach of Policy Conditions — Burden to prove always on insurer — Plea taken by insurer that driver of concerned vehicle did not have valid and effective licence — In appeal, plea taken that victim was gratuitous passenger — Burden to prove breach of policy not discharged — Insurer liable.

#### **IV (2006) ACC 668 (Bombay HC)**

- **Sections 149(2) and 170** — Defences available to insurer — Right to contest claim on all grounds — Absence of Permission under Section 170, from Tribunal — Insurer does not get automatic right to defend claim on grounds not covered by Section 149(2) — Finding of Tribunal on question of negligence, cannot be assailed — Defences limited to those mentioned under Section 149(2).

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

- **Section 155** — Death of owner of offending vehicle — Abatement of proceedings — Soon after coming to know such death, claimants filed application to bring R-5 and R-6 as legal representatives — True that R-5 and R-6 did not succeed to estate of deceased — Their impleadment was only to continue proceedings *vis-a-vis* estate of deceased — Section 155 of Act directs proceedings do not abate on death of insured.

#### **IV (2006) ACC 610 (Andhra Pradesh HC)**

- **Section 157** — Transfer of Certificate of Insurance — Liability of insurer — Vehicle transferred

— Subsequent owner obtained insurance coverage, while vehicle already stood under insurance with another insurer — Tribunal held both Insurance Companies jointly and severally liable — Hence appeal — No provision in Act which permits vehicle to be insured by two different insurance companies — In instant case, since transferee obtained fresh insurance policy, existing policy stands terminated and ceases to be operative — In such situation, company, with whom vehicle insured afresh after transfer of ownership of vehicle, shall alone be liable to pay compensation.

#### **IV (2006) ACC 589 (Jharkhand HC) (DB)**

— **Section 163A** — Claim Petition — Requirement to plead and establish negligence of driver of offending vehicle — Section 163A provides mechanism for awarding compensation without insisting on proof of negligence — Section takes in its sweep even those cases wherein victim's own negligence leads to causing accident — In present case, victim himself responsible for accident — Suffered injuries too — He can, as injured, maintain application for compensation.

#### **IV (2006) ACC 513 (Gauhati HC)**

— **Section 163A** — Claim Petition — Annual income of claimant more than Rs. 40,000 — Maintainability of petition under Section 163A — Clear provision of law that person whose annual income exceeds Rs. 40,000 p.a., is not eligible to make application under Section 163A, by restricting his income to slab of Rs. 40,000 — In present case, income of claimant exceeds said limit — Petition not maintainable.

#### **IV (2006) ACC 513 (Gauhati HC)**

— **Section 163A** — Claim Petition — Maintainability — Requirement to prove sustaining of permanent disability by victim — Claimant chose to claim compensation under Section 163A — No evidence that any injury resulting in permanent disablement or physical impairment — In absence of such proof, claimant not entitled to claim compensation — Claim petition rightly dismissed as being not maintainable.

#### **IV (2006) ACC 686 (Madhya Pradesh HC)**

— **Section 166** — Indian Succession Act, 1925 — Section 306 — Action for personal injuries — Action does not survive and does not pass over to his legal representatives — However, claim under Act also relates to estate of deceased, such part of action survives on death of claimant and passes over to his legal representatives.

#### **IV (2006) ACC 488 (Andhra Pradesh HC) (DB)**

— **Section 166** — Claim Petition — 2 claims by 2 different groups of legal representatives in respect of death of one person — Maintainability — Tribunal passed awards — Appeal by insurer — Payment of compensation twice, on account of death of same person, not permissible — Earlier petition filed by wife and children, second one by second wife — Award passed in second petition deserves to be quashed — Matter remanded to Tribunal — Second wife to be impleaded as party — Directions to distribute and disburse amount amongst claimants after they establish their rights as legal representatives of deceased.

#### **IV (2006) ACC 559 (Gujarat HC)**

— **Section 166** — Claim Petition — Entertainment of — Limitation — Petition has to be entertained by Tribunal without taking note of date, on which accident occurred.

#### **IV (2006) ACC 690 (Punjab & Haryana HC)**

— **Section 168** — Fatal Accidents Act, 1855 — Sections 1A and 2 — Awarding Just Compensation — Principles of Assessment — Justness of compensation is determined in context of peculiar facts of each case — Loss of estate awardable to legal heirs of deceased even if they are not dependent on him — But loss on account of dependency calculated under Section 1A, payable only to dependents of deceased — Application of multiplier important factor for assessment of compensation — Principles of assessment discussed.

#### **IV (2006) ACC 432 (Gujarat HC) (DB)**

- **Sections 168, 173** — Motor Vehicles Rules, 1994 — Rule 242 — Civil Procedure Code, 1908 — Order 41 — Appeal — Single appeal against common award, clubbing 2 separate claim cases — Maintainability — Nothing in Section 173, prohibiting filing of one appeal against such common award — Rather Section 173 read with Section 168 shows that an appeal can be filed against common award on several claims — Appeal maintainable.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

- **Section 171** — Interest — Granted by way of compensation — Need not be claimed specifically — Same must be reasonable one — In instant case, Single Judge awarded interest @ 12% p.a. — Rate of interest now granted @ 9% p.a. — Under such circumstances, appellant's claim for interest on sum enhanced by Division Bench, cannot be accepted.

#### **IV (2006) ACC 453 (SC)**

- **Section 173** — Madras High Court Appellate Side Rules, 1965 — Order 1 Rules 1(6)(a) and 2(5)(c) — Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Sections 52 and 53 — Appeal — Subject matter of appeal — Valuation of — Placing of appeals before Single Judge or Division Bench of this Court — “Value of subject matter of appeal” means value of relief refused or granted which is appealed against plus interest if any, that accrued pending proceedings — If such value is Rs. 15,00,000 or upwards, appeal is to be placed before Division Bench and in case it is less than Rs. 15,00,000, appeal to be placed before Single Judge.

#### **IV (2006) ACC 395 (Madras HC)**

- **Section 173** — Appeal — Maintainability — Case of frivolous litigation — Appellant is challenging against enhancement of compensation by Single Judge in one death case — No appeal filed by insurer — Appellant has nothing at all to urge in support of this appeal — Reason, it was not aggrieved by impugned order — Appeal filed frivolously, with no chances of success — Litigation wholly avoidable — Appeal to be dismissed with costs.

#### **IV (2006) ACC 473 (Rajasthan HC) (DB)**

- **Section 173** — Appeal by Insurer — Liability to compensate disputed — Accident between car and tractor — Death of deceased — Negligence of tractor driver not imputed by claimants — Driver of car held valid licence — Insurer liable to induct insured for awarded amount of compensation — No merit in appeal.

#### **IV (2006) ACC 569 (Punjab & Haryana HC) (DB)**

##### **Motor Vehicles Rules, 1989**

- Permit — Grant of — Using vehicle without permit — Seizure of vehicle — Imposition of tax — Constitutional validity of Clause (g) of Entry IV of First Schedule of Act of 1991 read with Explanation (7) — Appellants have been granted permit for plying their buses as contract carriage — Allegation against them that conditions of permit violated as they plied vehicles as stage carriage — Owner of vehicle having one kind of permit could not be treated as having no permit at all only because transport authorities had reason to believe violation of conditions of permit — Undoubtedly, permit holder liable to comply with conditions of permit — In case of any violation thereof, law takes its course — Permit granted under Act of 1988 — Consequences for any violation shall be in accordance with Section 192A of Act of 1988 — Tax, in such case, cannot be imposed by way of penalty, although penalty can be imposed for non-payment of tax or evasion of tax — Appellants have paid tax as specified for in permits granted in their favour as contract carriage — Different rate of tax which is not contemplated under Section 3 of 1991 Act, cannot be imposed as penalty — Aforesaid clause declared unconstitutional — Motor Vehicles Act, 1988 — Sections 66, 72, 74, 192A — **Motor Vehicles Rules, 1989 — Rules 85, 85A** — Madhya Pradesh Motoryan Karadhan Adhinyam, 1991 (as amended by M.P. Motoryan Sanshodhan Adhinyam, 2004) — First Schedule, Entry IV Clause (g) read with Explanation (7), Sections 2(c), 3, 16.

#### **IV (2006) ACC 628 (SC)**

##### **Motor Vehicles Rules, 1994**

- Motor Vehicles Act, 1988 — Sections 168, 173 — **Motor Vehicles Rules, 1994 — Rule 242** —

Civil Procedure Code, 1908 — Order 41 — Appeal — Single appeal against common award, clubbing 2 separate claim cases — Maintainability — Nothing in Section 173, prohibiting filing of one appeal against such common award — Rather Section 173 read with Section 168 shows that an appeal can be filed against common award on several claims — Appeal maintainable.

#### **IV (2006) ACC 505 (Chhattisgarh HC) (DB)**

##### **Tamil Nadu Court Fees and Suits Valuation Act, 1955**

Motor Vehicles Act, 1988 — Section 173 — Madras High Court Appellate Side Rules, 1965 — Order 1 Rules 1(6)(a) and 2(5)(c) — **Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Sections 52 and 53** — Appeal — Subject matter of appeal — Valuation of — Placing of appeals before Single Judge or Division Bench of this Court — “Value of subject matter of appeal” means value of relief refused or granted which is appealed against plus interest if any, that accrued pending proceedings — If such value is Rs. 15,00,000 or upwards, appeal is to be placed before Division Bench and in case it is less than Rs. 15,00,000, appeal to be placed before Single Judge.

#### **IV (2006) ACC 395 (Madras HC)**

##### **West Bengal Motor Vehicles Rules, 1989**

Motor Vehicles Act, 1988 — Section 83 — Central Motor Vehicles Rules, 1989 — Rule 93 — **West Bengal Motor Vehicles Rules, 1989 — Rule 153** — Replacement of Vehicles — Imposition of conditions — Legality — Condition regarding specifications of concerned vehicle *viz.*, width and gangway, while permitting him to replace his existing motor vehicle, not arbitrary or unreasonable.

#### **IV (2006) ACC 663 (Calcutta HC)**

##### **Workmen’s Compensation Act, 1923**

**Section 2(1)(m)** — Wages — Diet expenses — Daily allowance given for purpose of food is privilege and benefit — Same can be estimated in terms of money — Has to be included in wages of workman while calculating compensation.

#### **IV (2006) ACC 642 (Allahabad HC) (DB)**

— **Sections 2(n), 3** — ‘Workman’ — Death arising out of and in course of employment — Proof — Casual connection between accident and employment of deceased — Deceased auto driver — While driving, he suffered severe chest pain, control over vehicle lost and vehicle was upset — Deceased taken to doctor, declared dead — 1st and 2nd opposite parties denied relationship of deceased with them as employer and employee — First O.P. owner failed to prove, by producing his driving licence, that he was owner-cum-driver of auto — Similarly, 2nd O.P. also failed to prove that he was driver employed with O.P. 1 — Absence of any documentary proof from side of O.Ps. — Commissioner rightly concluded deceased was workman as per Act — No point agitated to disprove finding of Commissioner — Evident that accident of employee had casual connection with his employment — Finding that deceased died out of and in course of injuries suffered out of employment, upheld.

#### **IV (2006) ACC 475 (Madras HC)**

— Workmen’s Compensation — Assault — Arising out of and during course of employment — Employer’s liability to compensate — Claim rejected holding that there was no causal connection between death and employment — Hence present appeal — Deceased switchman at Railway Station — Group of anti-social elements armed with deadly weapons trespassed Station Master’s office and damaged railway property — Deceased, though after completion of his duty period, came out to pacify mob — Suffered *lathi* blow while trying to do so — Deceased courageous enough to come out to save railway property even after his duty hours — Cannot be said death not in course of employment — Claimants entitled for compensation — **Workmen’s Compensation Act, 1923 — Section 3.**

#### **IV (2006) ACC 622 (SC)**

- Workmen's Compensation — Death during employment — Employer's liability to compensate — Liability denied stating, son of deceased was given compassionate appointment and full service benefits paid — Same, no ground to deny compensation to dependents payable under Act — **Workmen's Compensation Act, 1923 — Section 3.**

#### **IV (2006) ACC 622 (SC)**

- **Sections 3, 4** — Death of workman during employment — Compensation — Quantum — Absence of valid proof of real wages earned by deceased — Minimum wages payable for drivers to be taken account of — Same arrived at Rs. 1,316 p.m. — Same restricted to Rs. 1,000 as per Section 4(1)(b) Explanation II — Age 35 years — Compensation worked out at  $(Rs. 1,000 \times 40 \times 197.069) \div 100 = Rs. 78,824$  — Award of Commissioner upheld — Since vehicle validly insured, insurer liable to pay compensation amount.

#### **IV (2006) ACC 475 (Madras HC)**

- Workmen's Compensation — Quantum — Interest on account of compensation — Deceased aged 56 years, earning Rs. 1,600 — Rs. 1,05,560 found payable — However award restricted for Rs. 84,448 since that much was claimed — Claimant entitled to Rs. 84,448 along with statutory interest payable under Act — **Workmen's Compensation Act, 1923 — Sections 3, 4A(3).**

#### **IV (2006) ACC 622 (SC)**

- **Section 3(5)(b)** — Accident arising out of and during course of employment — Employer's liability to compensate — Right of claimants to approach Commissioner under Act or Civil Court — Jurisdiction of Civil Court to award compensation — Contention of employer, claimants could not have approached Civil Court for compensation, only option was to file claim before Commissioner under Act — Rejected — Remedies open to claimants under Act or before Civil Court are in alternative — No provision of Act excludes in specific terms jurisdiction of Civil Court to entertain claim for compensation — No agreement between parties which could possibly keep any claim for damages outside jurisdiction of Civil Court — Compensation rightly awarded by Civil Court.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

- **Section 3(5)(b)** — Employer's Liability for Compensation — Agreement between parties providing for payment of compensation — Scope of — Any such agreement must be post-accident one, providing for settlement of claim in accordance with provisions of Act — Object underlying Section 3(5)(b) is to prevent litigation post-settlement — After such agreement is arrived at between parties, no suit for damages can be maintained in Civil Court.

#### **IV (2006) ACC 464 (Delhi HC) (DB)**

- **Section 4(A)(3)(a)** — Interest on account of compensation — Liability of insurer to pay — Failure of employer to make payment of compensation within stipulated time — Same is virtually a statutory liability on insurer — Further, absence of clause in policy specifically providing for exemption of insurer from liability to pay interest — Insurer liable.

#### **IV (2006) ACC 461 (Punjab & Haryana HC)**

- **Section 4A(3)(a)** — Interest on account of Compensation — Liability of insurer — Absence of stipulation regarding non-liability for payment of interest — Unless such stipulation is made, insurer will be held liable for such payment.

#### **IV (2006) ACC 570 (Rajasthan HC)**

- **Section 4A(3)(a)** — Interest on account of compensation — Insurer's liability — Act itself provides for interest on compensation so awarded — Cannot be said that interest would not form part of compensation awarded — Insurer liable to pay interest @ 12% p.a.

#### **IV (2006) ACC 642 (Allahabad HC) (DB)**

- **Section 4A(3)(b)** — Penalty on Compensation Amount — Imposing penal interest on insurer — Legality of — No provision empowering Commissioner to impose penal interest — In case amount not deposited within stipulated period, penalty can be imposed on employer, not upon

insurer — Award of penal interest against insurer unjustified.

**IV (2006) ACC 570 (Rajasthan HC)**

- **Section 12** — Accident arising out of and during course of employment — Entitlement to be compensated — Workman engaged with contractor — Liability of principal employer *vis-a-vis* contractor — As per Section 12, principal employer liable even in respect of worker engaged under contractor if work entrusted with contractor is connected with trade or business of principal employer — In present case, respondent No. 2 is Engineer/Contractor, respondent No. 3 Military Engineering Services is principal employer — Workman was directed to fix notice board on wall of site belonging to Engineer/Contractor — While doing so, wall collapsed, workman died — In case of Defence Department, work of fixing tubelight in signboard, cannot be said to be ordinarily part of trade or business — Cannot be held that principal employer is responsible to make good loss sustained by claimant — Second respondent liable.

**IV (2006) ACC 696 (Madras HC)**

- **Section 17** — “Contracting Out” — Workman not permitted to contract out of and to waive liability of employer under Act — However, employer and insurer are free to contract terms of insurance as per their own volition.

**IV (2006) ACC 570 (Rajasthan HC)**

- **Section 30** — Appeal against Award of Commissioner — Contention, Commissioner modified award without issuing notice and without giving any opportunity to insurer — Order passed subsequently, does not change either text, context or effect of earlier award — Alleged clarification/modification is nothing but recital of provisions of relevant sections — Not fit case to quash or set aside award.

**IV (2006) ACC 642 (Allahabad HC) (DB)**

- **Schedule I, Part II** — Scheduled Injury — Power of Authority to assess loss of earning capacity resulting therefrom — In present case, injury suffered by victim appears at Entry No. 28 — Percentage of loss of earning capacity specified as 11% — No justification for authority in ignoring same and taking 25% as loss of earning capacity — Freedom of Authority in assessing said loss, in respect of scheduled injuries, is completely restricted.

**IV (2006) ACC 403 (Andhra Pradesh HC)**

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