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#### **IV (2006) ACC 47 (Punjab & Haryana HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Breach of Policy — Use of vehicle for purposes other than for which it was insured — Tractor — Insured for agricultural purposes — Used for carrying passengers in trolley attached to it — Clear case of violation/breach of policy conditions — Further, no extra premium paid for covering risk of passengers travelling in tractor or trolley — Insurer and insured bound by conditions prescribed in policy — Insurer not liable in case of violation of same by insured — Findings of Tribunal to contrary not sustainable, set aside.

#### **IV (2006) ACC 324 (Rajasthan HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Driving licence — Dispute as to validity — Requirement to enquire about genuineness and authenticity of licence — Stand of driver from very beginning that he held valid licence — Law does not require owner to himself go and verify same from Licensing Authority — In present case, no ground to question and doubt authenticity of licence — In absence of any such suspicion, owner cannot be held liable — Further, onus to prove that owner negligent and failed to take due care and caution before employing driver, not discharged by insurer — In view of Supreme Court judgment in *Swaran Singh's* case, insurer cannot escape its liability.

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— Motor Vehicles Act, 1988 — Section 149(2) — Driving Licence — Invalid — Requirement to prove negligence on part of owner while employing driver — Failure to prove — Liability of insurer — Specific statement of owner that he saw original driving licence of driver before employing driver — No evidence from insurer to establish negligence or failure to exercise reasonable care on part of insured — Burden to prove breach of policy on insurer — Failure to discharge — Insurer liable.

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##### **CUSTODIAL DEATH**

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#### **IV (2006) ACC 7 (Gauhati HC)**

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#### **IV (2006) ACC 15 (Rajasthan HC) (DB)**

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Principles of Assessment — Deduction towards personal expenses — Deceased labourer — Dependents : wife, 3 minor children, brother and mother — Income assessed at Rs. 1,500 p.m. — Tribunal deducted Rs. 300 towards personal expenses keeping in view number of dependents — Deduction as above, instead of standard 1/3rd, just and reasonable.

#### **IV (2006) ACC 58 (Rajasthan HC)**

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#### **IV (2006) ACC 345 (Gujarat HC) (FB)**

##### **DEPENDENTS**

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#### **IV (2006) ACC 149 (Madras HC)**

— Principles of Assessment — Determination of dependency — Appropriate method is to take current income as dependency by rounding off same.

#### **IV (2006) ACC 32 (Punjab & Haryana HC)**

— Workmen's Compensation Act, 1923 — Section 2(1)(d)(iii)(b) — Dependant — Parents of deceased — Entitlement to compensation — Deceased unmarried — 'Parents' undoubtedly are dependants of deceased unmarried son — Commissioner made patent error in holding to contrary — Both petitioners, father and mother, jointly entitled to receive compensation amount.

#### **IV (2006) ACC 108 (Himachal Pradesh HC)**

##### **DISABILITY**

Workmen's Compensation Act, 1923 — Sections 3 and 4 — Injuries During Employment — Not a fit case — Entitlement to compensation — Enhancement — Compound fracture on left leg below knee and pelvis bone and head injuries — Disability certificate assessed damage to extent of 56% — Commissioner assessed loss of earnings as 30% — Hence appeal — Contention, said reduction contrary to medical certificate, rejected — Apart from evidence of doctor and claimant, nothing to show reduction in earning capacity on account of disability — Disability certificate not sufficient to sustain claim for higher compensation — Award of Rs. 67,985 based on 30% loss of earning capacity upheld.

#### **IV (2006) ACC 205 (Madras HC)**

##### **DISABILITY CERTIFICATE**

Validity — Certificate issued by single doctor — Contention of insurer, same invalid as not been issued by Medical Board as required by law — Proforma attached with Rules shows certificate

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#### **IV (2006) ACC 121 (Rajasthan HC)**

##### **DISABLEMENT**

Employees State Insurance Act, 1948 — Sections 2(15A), 2(15B) Schedule I Part II — Permanent Partial Disablement — Ear injury — Assessment of disability — Contention of respondents, ear injury not referred to in Schedule, employee not entitled to any disablement benefit, rejected — Injuries contained therein not exhaustive — Section 2(15)A itself indicates that there can be other injuries which can be deemed to cause disablement.

#### **IV (2006) ACC 157 (Allahabad HC)**

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Workmen's Compensation Act, 1923 — Sections 8(6) and 8(7) — Distribution of Compensation — Award payable to woman — Payment directly or through investment — Discretion of Commissioner not to pay to her amount directly but to order its investment — Expression used is 'may' — Commissioner has to decide this issue on proper application of mind — Stipulation under Sections 8(6) and 8(7) not mandatory or binding, only discretionary — Not matter of rule, in every case where woman is entitled to receive compensation, she must be denied amount due to her and must be invested or applied otherwise — Petitioner, in present case, in dire need of money — Amount in question needs to be paid directly rather than it being kept in fixed deposit.

#### **IV (2006) ACC 108 (Himachal Pradesh HC)**

##### **DRIVING LICENCE**

Motor Vehicles Act, 1988 — Section 149(2) — Breach of policy — Driving licence — Validity — Liability of insurer — Validity period of driving licence of driver not been proved — Tribunal exonerated insurer — Challenge against — To avoid liability towards insured, insurer has to prove that insured was guilty of negligence and failed to exercise reasonable care while employing driver — No such evidence forthcoming — Insurer jointly and severally liable to compensate claimants.

#### **IV (2006) ACC 47 (Punjab & Haryana HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Driving licence — Dispute as to validity — Requirement to enquire about genuineness and authenticity of licence — Stand of driver from very beginning that he held valid licence — Law does not require owner to himself go and verify same from Licensing Authority — In present case, no ground to question and doubt authenticity of licence — In absence of any such suspicion, owner cannot be held liable — Further, onus to prove that owner negligent and failed to take due care and caution before employing driver, not discharged by insurer — In view of Supreme Court judgment in *Swaran Singh's* case, insurer cannot escape its liability.

#### **IV (2006) ACC 329 (Delhi HC)**

— Motor Vehicles Act, 1988 — Section 149(2) — Driving Licence — Invalid — Requirement to prove negligence on part of owner while employing driver — Failure to prove — Liability of insurer — Specific statement of owner that he saw original driving licence of driver before employing driver — No evidence from insurer to establish negligence or failure to exercise reasonable care on part of insured — Burden to prove breach of policy on insurer — Failure to discharge — Insurer liable.

#### **IV (2006) ACC 53 (Uttaranchal HC)**

— Negligence — Rash and negligent driving — Proof of vehicle being driven by 'R' — Driving licence of driver invalid — Liability of insurer — It was 'R' who got arrested from spot and FIR lodged against him — Eye-witnesses seen and apprehended him on spot — Clear evidence that 'R' was driving offending vehicle — Conclusion arrived at by Tribunal to contrary, not based on any reliable evidence — Contention of owner and driver that vehicle at relevant time was being

driven by some other person, made only to fasten liability on insurer since 'R' did not have valid licence — Findings of Tribunal set aside — Held, R responsible for causing accident — Since 'R' did not possess valid driving licence, insurer not liable.

#### **IV (2006) ACC 340 (Allahabad HC)**

##### **“EMPLOYER”**

Workmen's Compensation Act, 1923 — Section 3 — Death arising out of and during course of employment — Employer's liability to compensate — Contract of service — 'Employer' — Appellant bank, owner of jeep — Said jeep requisitioned by respondent No. 2 for election duty — Requisition under statute — Bank had no other option but to put same under services of requisitioning authority — In terms of requisition, services of deceased driver also placed — Driver for all intent and purport under control of respondent No. 4, District Election Officer — Deceased, while performing his duties, stayed at residence of respondent No. 2 — Allegedly, on his instructions deceased entered septic tank — In such process, accident occurred resulting in his death — Appellant bank held liable to compensate — Appeal against — Employer in this case is requisitioning authority — Same liable to pay compensation — Appellant bank to be reimbursed respecting award amount already deposited by it.

#### **IV (2006) ACC 1 (SC)**

— Workmen's Compensation Act, 1923 — Section 2(e) — “Employer” — Defined — Broad definition — Includes those who were in control of workman temporarily lent or let on hire to them by person with whom workmen entered into contract of service, besides person who employs another either permanently or on temporary basis.

#### **IV (2006) ACC 1 (SC)**

##### **EVIDENCE**

Accident — Manner in which it occurred — Proof — Accepting version of claimants against that of respondents — Reasons — Version of injured supported by independent eye-witness — No such witness examined by respondents though available on spot — Version of vehicle owner being interested one, not acceptable — Same not supported by any documentary or oral independent witness — Owner has not given proper version of manner in which accident occurred.

#### **IV (2006) ACC 334 (Madhya Pradesh HC) (DB)**

— Age — Proof — Tribunal relied upon documentary evidence — Said document not concocted — In view of trustworthy document, finding of Tribunal legal, in accordance with law based on reliable evidence.

#### **IV (2006) ACC 213 (Rajasthan HC)**

— Employees State Insurance Act, 1948 — Section 54A(2)(ii) — Disablement — Determination of — Accepting report of private medical practitioner over report of Medical Board constituted under Act — Legality of — No provision in Act about report of private doctor being admissible — Procedure and Forum being provided under Act itself, same has to be accepted — No other procedure or Forum can be substituted — Court below wrong in accepting one such report — Impugned order set aside.

#### **IV (2006) ACC 157 (Allahabad HC)**

— Income — Assessment — For purpose of determining compensation payable to claimants — Basis — Earnings of deceased from his business alone, could be made basis for determining compensation — It is that sum which is now no longer available to dependants due to untimely death of deceased — Income shown in tax returns as earned from business should have been basis for calculation — Income earned from interest is not loss to dependants, since amount remained in deposit and would go to nominee of deceased — This part of income is to be excluded from consideration while assessing — Further, income of minor children cannot be regarded as income earned by deceased from his business, same liable to be excluded — Income of deceased assessed

at Rs. 1,27,500 being earned from his business.

#### **IV (2006) ACC 114 (Madhya Pradesh HC) (DB)**

- Income — Assessment — Victim blue collar worker, selling vegetables daily, also engaged as labourer in his free time — Income alleged at Rs. 3,000 p.m. — Testimony of claimant not been shaken in cross-examination — No reason for disbelieving his statement — Such persons would hardly have any documentary evidence to prove their income — Tribunal justified in accepting his statement regarding income as true.

#### **IV (2006) ACC 121 (Rajasthan HC)**

- Motor Vehicles Act, 1988 — Section 149(2) — Driving Licence — Invalid — Requirement to prove negligence on part of owner while employing driver — Failure to prove — Liability of insurer — Specific statement of owner that he saw original driving licence of driver before employing driver — No evidence from insurer to establish negligence or failure to exercise reasonable care on part of insured — Burden to prove breach of policy on insurer — Failure to discharge — Insurer liable.

#### **IV (2006) ACC 53 (Uttaranchal HC)**

- Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Deceased gratuitous passenger — Contention of claimants, deceased hired truck for taking goods and was travelling as owner of goods at relevant time — Surprisingly, no goods receipts, log book or other documentary evidence produced to show that deceased in fact had hired truck — Admittedly, at time of accident no goods were being carried — Lack of cogent evidence to prove contention — Only owner responsible to pay compensation, insurer not liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

##### **EX GRATIA**

Motor Vehicles Act, 1939 — Section 110A — Claim Petition — Sustainability of award — Accident between bus and dumper — Claim petition by SRTC — Expenses incurred on repairs and idle charges per day sought — Further claim for recovery of *ex gratia* payment made by SRTC to relatives of deceased and injured persons — As per evidence on record, Rs. 27,000 to be awarded towards repairs, etc. — Since bus driver contributed to accident, 50% of said amount payable — *Ex gratia* payment made to injured not awardable — Such expense being not damage to tangible property arising directly out of accident — Payment of Rs. 30,000 made to dependants of deceased, to be adjusted against compensation payable to them.

#### **IV (2006) ACC 306 (Bombay HC)**

##### **EXTRA PREMIUM**

Motor Vehicles Act, 1988 — Section 147(1) — Liability of insurer — Third parties — Additional premium received — Cover note shows that premium of Rs. 10 each was paid for 5 passengers — Once additional premium is accepted, insurer cannot restrict or limit its liability — Apportionment made by Tribunal directing insurer to pay Rs. 20,000 and rest of amount to be paid by owner, needs to be quashed — Insurer and insured jointly and severally liable.

#### **IV (2006) ACC 266 (Bombay HC)**

- Workmen's Compensation Act, 1923 — Section 4A(3)(b) — Penalty on account of compensation — Insurer's liability to pay — Contention of insurer, no liability to reimburse penalty, not accepted — Admittedly, while insuring vehicle, insurer charged additional premium to cover all liabilities incurred by insured under Act of 1923 — Having accepted such premium, insurer cannot deny its liability.

#### **IV (2006) ACC 127 (Rajasthan HC)**

##### **FIR**

Accident — Proof of negligence — Statement recorded in FIR *vis-a-vis* statement on oath — Accident on 16.6.1994 — FIR lodged for first time on 20.9.1994 three months after accident —

Contention of insurer of impugned vehicle, no reason for such delay — Specific mention in FIR impugned vehicle caused accident, registration number of vehicle given — Tribunal concluded negligence of driver of vehicle on basis of solemn affirmation of parties — Decision arrived by Tribunal based on evidence — Statement in FIR not raised on pedestal higher than that of statement on oath — Negligence fixed by Tribunal confirmed — Insurer of offending vehicle liable.

#### **IV (2006) ACC 96 (Madras HC)**

##### **FALSE CLAIM**

Claim Petition — Case false and fabricated — Petition dismissed — Hence appeal — Right hand crushed — No proof that such injury was sustained in motor vehicle accident — Illusive answers, vague story, lack of documentary evidence, contradictory testimonies clearly expose that case is falsely fabricated to gain compensation from Tribunal — Rightly dismissed — Interim compensation of Rs. 25,000 paid to claimant deserves to be returned to insurer.

#### **IV (2006) ACC 242 (Rajasthan HC)**

— Indian Penal Code, 1860 — Section 340 r/w Section 195 — Abuse of Process of Law — Making false cases — Tendency to make fast buck by filing frivolous cases is increasing day-by-day — Such tendency harmful for judiciary and society — To deal with such menace, strict view should be taken — In case it is discovered that claimant made utterly false claim petition then action under Section 340 r/w Section 195 should be taken — Exemplary costs should also be imposed upon such claimants.

#### **IV (2006) ACC 242 (Rajasthan HC)**

##### **FUTURE PROMOTIONS**

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#### **IV (2006) ACC 16 (Madras HC)**

##### **GOODS VEHICLE**

Motor Vehicles Act, 1988 — Section 147(1) — Goods Vehicle — Carrying passengers — Exoneration of insurer from liability — Challenge against — Appeal by owner — Evidence on record and averment in claim petition that injured/deceased travelled along with their goods — Evidence of claimants unrebutted — Insurer statutorily liable to cover risk of such passengers — Insurer cannot escape from liability.

#### **IV (2006) ACC 285 (Madhya Pradesh HC) (DB)**

— Motor Vehicles Act, 1988 — Section 147(1) — Goods vehicle — Gratuitous passenger — Liability of insurer — Claim of claimant, that accident occurred when he accompanied firewood being carried in goods Autorikshaw — No material available on record except his interested testimony — Policy not intended for purpose of passengers — Risk of gratuitous passenger not covered — Insurer not liable to indemnify owner — Claimant to realise amount from owner-cum-driver of goods autorikshaw.

#### **IV (2006) ACC 44 (Kerala HC)**

##### **GRATUITOUS PASSENGER**

Motor Vehicles Act, 1988 — Section 147(1) — Goods vehicle — Gratuitous passenger — Liability of insurer — Claim of claimant, that accident occurred when he accompanied firewood being carried in goods Autorikshaw — No material available on record except his interested testimony — Policy not intended for purpose of passengers — Risk of gratuitous passenger not covered — Insurer not liable to indemnify owner — Claimant to realise amount from owner-cum-driver of goods autorikshaw.

#### **IV (2006) ACC 44 (Kerala HC)**

— Motor Vehicles Act, 1988 — Section 147(1) — Goods Vehicle — Passengers travelling therein

— Insurer not liable — Liability to pay and recover — Direction regarding — Challenge against — Appeal by insurer — Contention, once insurer held not liable, no such direction could be passed against it, rejected — Insurer's entire interest safeguarded by Tribunal by entitling him to recover compensation amount from vehicle owner — Order of Tribunal upheld.

#### **IV (2006) ACC 292 (Rajasthan HC)**

— Motor Vehicles Act, 1988 — Section 147 — Gratuitous Passenger — Liability of insurer — Policy did not cover risk of any such passenger — Insurer ought not to have been held liable — Clear declaration by claimants themselves that said victim was gratuitous passenger in offending vehicle — Still insurer held liable — Finding so reached by Tribunal, completely perverse — No scope for Tribunal to hold so — Admittedly, award passed before Supreme Court decision in *Asha Rani's* case was pronounced — While insurer remains liable to satisfy award, its financial interest has to be protected by giving necessary directions — Direction to obtain requisite security from owner of offending vehicle before release of award amount.

#### **IV (2006) ACC 176 (Gauhati HC)**

— Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Deceased gratuitous passenger — Contention of claimants, deceased hired truck for taking goods and was travelling as owner of goods at relevant time — Surprisingly, no goods receipts, log book or other documentary evidence produced to show that deceased in fact had hired truck — Admittedly, at time of accident no goods were being carried — Lack of cogent evidence to prove contention — Only owner responsible to pay compensation, insurer not liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

— Motor Vehicles Act, 1988 — Section 147(1) — Liability of insurer — Third parties — Additional premium received — Cover note shows that premium of Rs. 10 each was paid for 5 passengers — Once additional premium is accepted, insurer cannot restrict or limit its liability — Apportionment made by Tribunal directing insurer to pay Rs. 20,000 and rest of amount to be paid by owner, needs to be quashed — Insurer and insured jointly and severally liable.

#### **IV (2006) ACC 266 (Bombay HC)**

— Negligence — Taking passengers in contravention of provisions of law and against instructions of his master — Admittedly, driver forbidden by his employer to carry passengers on truck — Owner not vicariously liable for compensation towards any accident by such carrying — Since deceased gratuitous passenger, insurer been rightly exonerated from its liability — Driver alone liable.

#### **IV (2006) ACC 155 (Bombay HC)**

##### **GROSS INCOME**

Quantum — Fatal — Enhancement — Assessment of income — Taking net income instead of gross one — Unjustified — Gross salary of deceased Rs. 10,464.94 p.m. — Tribunal computed compensation taking Rs. 7,490 as net monthly income — Further deduction of Rs. 1,490 made — Income taken as Rs. 6,000 p.m. — Possible factor of advancement in future career of victim in event of his being alive, to be taken into consideration — Income can be safely taken as Rs. 10,000 p.m. — Enhancement accordingly — Claimants entitled to Rs. 8,80,000 in place of Rs. 5,37,500 with interest @ 6% on enhanced amount.

#### **IV (2006) ACC 301 (Calcutta HC) (DB)**

##### **IDENTITY OF DRIVER**

Accident — Proof of vehicle being driven by particular person — Accident dated 10.2.1993 — Challan by ARTO, dated 27.8.1992, cannot be piece of evidence to prove that vehicle on relevant date was being driven by same person in whose name challan existed.

#### **IV (2006) ACC 340 (Allahabad HC)**

##### **INCOME**

Assessment — Deceased matriculate, allegedly engaged in cultivating agricultural land and dairy farming — Tribunal assessed income at Rs. 2,100 p.m. — Evidence regarding dairy business not

acceptable, rightly rejected by Tribunal — Assessment of income on lower side — Even if deceased daily labourer, still can be said to have earned Rs. 100 per day — Income liable to be assessed at Rs. 3,000 p.m.

#### **IV (2006) ACC 47 (Punjab & Haryana HC)**

— Assessment — For purpose of determining compensation payable to claimants — Basis — Earnings of deceased from his business alone, could be made basis for determining compensation — It is that sum which is now no longer available to dependants due to untimely death of deceased — Income shown in tax returns as earned from business should have been basis for calculation — Income earned from interest is not loss to dependants, since amount remained in deposit and would go to nominee of deceased — This part of income is to be excluded from consideration while assessing — Further, income of minor children cannot be regarded as income earned by deceased from his business, same liable to be excluded — Income of deceased assessed at Rs. 1,27,500 being earned from his business.

#### **IV (2006) ACC 114 (Madhya Pradesh HC) (DB)**

— Assessment — Tribunal assessed income of deceased at Rs. 3,000 p.m. — Justifiability — Contention, deceased was earning far more than this — Widow deposed that her husband used to give around Rs. 5,000 p.m. to her — Income as per income tax return Rs. 44,000 p.a. — Tribunal assessed income after discussing all evidence — No different view can be taken — Assessment upheld.

#### **IV (2006) ACC 71 (Rajasthan HC)**

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#### **IV (2006) ACC 121 (Rajasthan HC)**

##### **INSURANCE**

Motor Vehicles Act, 1988 — Sections 147, 151 — Liability of Insurer — Insurance policy — Burden to prove that vehicle insured with named insurer — On claimants — Merely because claimant chooses to implead particular insurer as insurer of offending vehicle, it cannot be presumed that same was insured with that insurer — Claimants could not prove that offending vehicle was insured with appellant by date of accident — Tribunal erroneously held appellant liable.

#### **IV (2006) ACC 5 (Andhra Pradesh HC)**

##### **INSURANCE POLICY**

Contract between insurer and insured — Parties bound down by terms and conditions of policy for relevant period.

#### **IV (2006) ACC 266 (Bombay HC)**

— Insurance Policy — Commencement — In absence of contract to contrary, policy effective from mid night of day on which it is taken — In present case, column relating to commencement of policy did not contain any stipulation as to time — Contract to contrary non-existent — Cannot be said policy effective from particular time on date of issuance — Insurer liable.

#### **IV (2006) ACC 179 (Andhra Pradesh HC)**

— Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Vehicle not insured — Award amount paid by way of mistake and inadvertence — Insurer not under legal liability to pay compensation when there is no policy — No liability to pay enhanced compensation — Same to be paid by owner of offending vehicle.

#### **IV (2006) ACC 223 (Karnataka HC)**

##### **INTEREST**

Motor Vehicles Act, 1988 — Section 171 — Interest — Rate of — Claim for reduction — Tribunal awarded interest @ 12% p.a. — Insurer urged to reduce rate — Insurer's request can be considered — Interest reduced to 9% p.a.

#### **IV (2006) ACC 266 (Bombay HC)**

— Workmen's Compensation Act, 1923— Sections 3, 4 — Death during employment — Liability to pay compensation with interest — Insurer held liable — Hence appeal — Failure to show any negative clause in policy, to extent that appellant not liable for payment of interest — Award of Commissioner directing compensation with interest upheld — No case made out for interference.

#### **IV (2006) ACC 73 (Punjab & Haryana HC)**

##### **INVESTMENT**

Workmen's Compensation Act, 1923 — Sections 8(6) and 8(7) — Distribution of Compensation — Award payable to woman — Payment directly or through investment — Discretion of Commissioner not to pay to her amount directly but to order its investment — Expression used is 'may' — Commissioner has to decide this issue on proper application of mind — Stipulation under Sections 8(6) and 8(7) not mandatory or binding, only discretionary — Not matter of rule, in every case where woman is entitled to receive compensation, she must be denied amount due to her and must be invested or applied otherwise — Petitioner, in present case, in dire need of money — Amount in question needs to be paid directly rather than it being kept in fixed deposit.

#### **IV (2006) ACC 108 (Himachal Pradesh HC)**

##### **INVOLVEMENT OF VEHICLE**

Accident — Proof of negligence — Statement recorded in FIR *vis-a-vis* statement on oath — Accident on 16.6.1994 — FIR lodged for first time on 20.9.1994 three months after accident — Contention of insurer of impugned vehicle, no reason for such delay — Specific mention in FIR impugned vehicle caused accident, registration number of vehicle given — Tribunal concluded negligence of driver of vehicle on basis of solemn affirmation of parties — Decision arrived by Tribunal based on evidence — Statement in FIR not raised on pedestal higher than that of statement on oath — Negligence fixed by Tribunal confirmed — Insurer of offending vehicle liable.

#### **IV (2006) ACC 96 (Madras HC)**

##### **LEGISLATURE INTEREST**

Motor Vehicles Act, 1988 — Section 140 — No fault liability — Payment of compensation — Statement of objects and reasons prompting Legislature to make provisions regarding payment of compensation by way of no fault liability in hit and run cases — Quoted.

#### **IV (2006) ACC 345 (Gujarat HC) (FB)**

##### **LIABILITY OF INSURER**

Motor Vehicles Act, 1988 — Section 147 — Gratuitous Passenger — Liability of insurer — Policy did not cover risk of any such passenger — Insurer ought not to have been held liable — Clear declaration by claimants themselves that said victim was gratuitous passenger in offending vehicle — Still insurer held liable — Finding so reached by Tribunal, completely perverse — No scope for Tribunal to hold so — Admittedly, award passed before Supreme Court decision in *Asha Rani's* case was pronounced — While insurer remains liable to satisfy award, its financial interest has to be protected by giving necessary directions — Direction to obtain requisite security from owner of offending vehicle before release of award amount.

#### **IV (2006) ACC 176 (Gauhati HC)**

— Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Deceased conductor in

vehicle — Admittedly, insurer had covered liability for conductor — Even otherwise, as per provisions of Act, insurer liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

— Motor Vehicles Act, 1988 — Section 149 — Liability of Insurer — No evidence that bus driver was having registration certificate, road permit etc. — Tribunal rightly absolved insurer of its liability to compensate — Liability, if any, of owner alone.

#### **IV (2006) ACC 294 (Uttaranchal HC) (DB)**

— Motor Vehicles Act, 1988 — Section 147 (1) [Prior to 1994 amendment] — Goods vehicle — Liability of insurer towards non-fare paying passenger — Deceased hired lorry and was travelling therein along with sand load — Cannot be said deceased unauthorised passenger — Insurance policy or any other evidence not produced by insurer to show that there is no legal liability towards such person — Insurer cannot avoid its liability.

#### **IV (2006) ACC 190 (Karnataka HC)**

— Negligence — Taking passengers in contravention of provisions of law and against instructions of his master — Admittedly, driver forbidden by his employer to carry passengers on truck — Owner not vicariously liable for compensation towards any accident by such carrying — Since deceased gratuitous passenger, insurer been rightly exonerated from its liability — Driver alone liable.

#### **IV (2006) ACC 155 (Bombay HC)**

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

Motor Vehicles Act, 1988 — Sections 140, 144, 161, 163A and 166 — Claim Petition — Interim compensation — Amount towards no fault liability — Absence of inquiry into defences led by insurer — Sustainability of award — Tribunal awarded Rs. 25,000 — Hence appeal by insurer — Contention, liability could not be fastened upon insurer to pay compensation under Section 140, without enquiring into defences put up by it — Rejected — Compensation under Section 140 is based on no fault principle — Claimant not required to prove it like claim of fault liability under Section 166 — Claims under Sections 140, 161, 166 and 163A are independent of each other and tried accordingly — Claim under Section 140 triable without requiring victim to establish negligence of owner of vehicle.

#### **IV (2006) ACC 225 (Gujarat HC) (DB)**

— Motor Vehicles Act, 1988 — Sections 140, 141, 144, 161, 163A and 166 — Gujarat Motor Vehicles Rules, 1989 — Rule 231 — No fault liability — Award of compensation thereunder — Absence of claim petition under Section 166 — Maintainability of application under Section 140 — Section 140 independent of Sections 161, 163A and 166 — Application for compensation under Section 140, maintainable without there being application for compensation under Section 163A or under Section 166 and disposable accordingly — Compensation awarded in such case shall be final — Insurer not entitled to raise any legal defences available to it under Section 149(2) — Remedy of insurer lies against owner of vehicle, not against claimant — Contention of insurer that present petition under Section 140, in absence of petition under Section 166, not maintainable, untenable.

#### **IV (2006) ACC 345 (Gujarat HC) (FB)**

— Motor Vehicles Act, 1988 — Section 140 — Interim Compensation — Personal injury — Tribunal awarded Rs. 25,000 — Hence appeal by insurer — Contention, mere filing of application under Section 140 not sufficient, obligatory upon claimant to prove fact of having incurred permanent disablement — Rejected — Tribunal undertook extensive discussion regarding contention of parties and documentary evidence while awarding compensation — Act itself mandates that claimant not under obligation to prove any negligence on part of owner of vehicle — Order of Tribunal upheld.

#### **IV (2006) ACC 252 (Andhra Pradesh HC)**

##### **LIFE INSURANCE**

Group Savings Linked Scheme — Default in payment of premium by employer — Policy lapsed — Liability — Employee not to suffer on account of laches on part of employer — Employer, though acting as agent of LIC, failed to deduct amount from salary of employee and make payment of premium to LIC — No notice of non-payment of premium given to employee — LIC liable to make payment of insured amount — Similar reliefs, as awarded under Salary Savings Scheme, entitled to be awarded to claimants in present case.

#### **IV (2006) ACC 297 (Patna HC)**

- Insurance Act, 1938 — Section 45 — Life Insurance — Claim repudiated for alleged suppression of material facts — Justifiability — Death of insured 2 years after policy by committing suicide — Case of insurer, deceased suffered from mental depression at time of taking of policy, underwent ECG, same not disclosed hence insurer not liable, cannot be accepted — No evidence led by insurer about deceased suffering from mental depression — Admittedly, doctor who medically examined assured, not found any such symptom — Omission to mention doing of ECG, can at best be an inaccurate or false statement not on material matter — Mere inaccuracy of statement, no ground for repudiating policy after 2 years — Insurer liable.

#### **IV (2006) ACC 192 (Punjab & Haryana HC)**

- Insurance Act, 1938 — Section 45 — Life Insurance — Repudiation of claim — Contention, deceased suppressed facts of his physical deformity, actual age and availing of medical leave prior to taking policy — Suppression of illness not affecting expectation of life cannot be ground to repudiate claim under policy — Contention that age, despite actually being 60 years, mentioned as 45 years, cannot be accepted — Admittedly, deceased died while in service — Accepting age of 60 years at relevant time would mean, deceased continued to be in service even at age of 62 years *i.e.*, after age of superannuation — Hence, age so mentioned in voter identity card cannot be accepted as correct — Repudiation unjustified — Insurer liable.

#### **IV (2006) ACC 182 (Orissa HC) (DB)**

- Life Insurance Policy with accident benefits — Death of insured in road accident — Repudiation of claim — Accident between two vehicles — Deceased driving one of them — Other vehicle being driven rashly and negligently, criminal case also registered against its driver — Widow of deceased failed to produce his driving licence — Widow house-wife — Details regarding licence held by her husband may not be in her knowledge — Further, since accident not due to rash and negligent driving of deceased — Claim cannot be repudiated on such ground alone — LIC directed to settle claim.

#### **IV (2006) ACC 31 (Karnataka HC)**

##### **LIMITATION**

Motor Vehicles Act, 1988 — Section 166 — Claim Petition — Maintainability — Limitation period — Claim application cannot be treated to be barred by limitation even if accident occurred before deletion of 6 months limitation period for filing such application.

#### **IV (2006) ACC 76 (Gauhati HC) (DB)**

- Motor Vehicles Act, 1988 — Section 166(3) [omitted by Motor Vehicles Amendment Act, 1994 *w.e.f.* 14.11.1994] — Claim petition — Limitation period — Effect of amendment — Deletion of said section should be given full effect — Even in case where matter pending before Tribunal or High Court, benefit of deletion will be made available to claimants — Only where awards attained finality, benefits are not available.

#### **IV (2006) ACC 306 (Bombay HC)**

##### **LIMITED LIABILITY**

Motor Vehicles Act, 1939 — Section 95(2)=[Section 147(2), Motor Vehicles Act, 1988] — Liability of Insurer — Limits of — Charging of extra premium to cover unlimited third party risk — Insurer charged Rs. 75 additionally, for coverage of risk on account of damage to third party property — Having charged so, insurer liable to bear entire amount of compensation payable to

claimants.

#### **IV (2006) ACC 29 (Punjab & Haryana HC)**

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

Employees State Insurance Act, 1948 — Section 82 — Eye injury — Loss of earning capacity — Assessment — For partial loss of vision of one eye, employee entitled to loss of 30% of earning capacity under Act — Findings of ESI Court upheld — No justifiable ground to interfere with impugned order.

#### **IV (2006) ACC 337 (Allahabad HC)**

— Workmen's Compensation Act, 1923 — Sections 3 and 4 — Injuries During Employment — Not a fit case — Entitlement to compensation — Enhancement — Compound fracture on left leg below knee and pelvis bone and head injuries — Disability certificate assessed damage to extent of 56% — Commissioner assessed loss of earnings as 30% — Hence appeal — Contention, said reduction contrary to medical certificate, rejected — Apart from evidence of doctor and claimant, nothing to show reduction in earning capacity on account of disability — Disability certificate not sufficient to sustain claim for higher compensation — Award of Rs. 67,985 based on 30% loss of earning capacity upheld.

#### **IV (2006) ACC 205 (Madras HC)**

##### **MAINTAINABILITY**

Motor Vehicles Act, 1988 — Section 173 — Appeal — Maintainability — Appeal by claimant seeking enhancement of compensation — Earlier, appeal filed by respondent owner of offending vehicle assailing quantum as excessive dismissed *in limine* holding compensation amount just and proper — Said appeal dismissed without giving notice to claimant — Present appeal by claimant cannot be dismissed on this technical ground — Order in earlier appeal not binding on claimant — Present appeal maintainable.

#### **IV (2006) ACC 210 (Karnataka HC)**

— Motor Vehicles Act, 1988 — Section 166 — Claim Petition — Several issues framed — Decision on one issue refused as same could not be decided as preliminary issue since it involved mixed question of facts and law — Decision of issue postponed to some later date after recording of evidence — Revision petition against — Maintainability — No party can compel Tribunal to decide issue as preliminary issue — Issue raised by insurer not pure question of law or jurisdiction — Order of Tribunal not faulted — Further, impugned order does not amount to “case decided” to hold revision petition against that order maintainable — Revision not maintainable.

#### **IV (2006) ACC 137 (Allahabad HC)**

— Motor Vehicles Act, 1988 — Sections 163A and 166 — Claim Petition — Treating of petition filed under Section 166 as that under Section 163A of Act — Justifiability — Claimants filed petition under Section 166, claiming income of deceased as more than Rs. 40,000 p.a. — During proceedings prayer made to treat petition under Section 163A by restricting income to less than Rs. 40,000 — In view of claim of claimants themselves, about income being more than said sum, Tribunal not justified in accepting prayer and treating petitions under Section 163A and awarding compensation accordingly — Impugned order set aside — Matter remanded.

#### **IV (2006) ACC 125 (Punjab & Haryana HC) (DB)**

— Motor Vehicles Act, 1988 — Sections 140, 141, 144, 161, 163A and 166 — Gujarat Motor Vehicles Rules, 1989 — Rule 231 — No fault liability — Award of compensation thereunder — Absence of claim petition under Section 166 — Maintainability of application under Section 140 — Section 140 independent of Sections 161, 163A and 166 — Application for compensation under Section 140, maintainable without there being application for compensation under Section 163A or under Section 166 and disposable accordingly — Compensation awarded in such case shall be final — Insurer not entitled to raise any legal defences available to it under Section 149(2) — Remedy of insurer lies against owner of vehicle, not against claimant — Contention of insurer

that present petition under Section 140, in absence of petition under Section 166, not maintainable, untenable.

#### **IV (2006) ACC 345 (Gujarat HC) (FB)**

##### **MEDICAL PRACTITIONER**

Employees State Insurance Act, 1948 — Section 54A(2)(ii) — Disablement — Determination of — Accepting report of private medical practitioner over report of Medical Board constituted under Act — Legality of — No provision in Act about report of private doctor being admissible — Procedure and Forum being provided under Act itself, same has to be accepted — No other procedure or Forum can be substituted — Court below wrong in accepting one such report — Impugned order set aside.

#### **IV (2006) ACC 157 (Allahabad HC)**

##### **MAXIMUM LIABILITY**

Motor Vehicles Act, 1939 — Section 95(2) — Liability of Insurer — Limits of — Policy issued after 31.10.1982 — Contention, liability limited to Rs. 50,000 rejected — Extent of liability has to be taken as Rs. 1,50,000 in case of each claim.

#### **IV (2006) ACC 306 (Bombay HC)**

##### **NECESSARY PARTY**

Impleadment of Parties — Accident between bus and motor cycle — Negligence of bus driver proved — Motor cycle rider sustained injuries — Owner and insurer of motor cycle are unnecessary parties to claim petition.

#### **IV (2006) ACC 16 (Madras HC)**

##### **NEGLIGENCE**

Actionable negligence — Death of pillion rider after falling from vehicle — Presence of water logged trenches on road — Rider could not properly judge road condition while crossing over trench — On account of jerk, pillion rider fell down — Over confidence and misjudgment of rider main cause of accident — Amounts to actionable negligence.

#### **IV (2006) ACC 52 (Karnataka HC)**

— Evidence — Accident — Manner in which it occurred — Proof — Accepting version of claimants against that of respondents — Reasons — Version of injured supported by independent eye-witness — No such witness examined by respondents though available on spot — Version of vehicle owner being interested one, not acceptable — Same not supported by any documentary or oral independent witness — Owner has not given proper version of manner in which accident occurred.

#### **IV (2006) ACC 334 (Madhya Pradesh HC) (DB)**

— Rash and negligent driving — Proof — O.P. never denied assertions of claimants regarding negligence of driver of offending vehicle — No issue framed — In its absence, no burden can be rested on claimants to prove accident due to negligent driving — Claimants need not adduce any evidence to that effect.

#### **IV (2006) ACC 76 (Gauhati HC) (DB)**

— Rash and negligent driving — Proof — Oral and documentary evidence available, for Tribunal to conclude that accident occurred only due to rash and negligent driving of bus driver — Evidence of independent eye-witness also to same effect — Finding of Tribunal fixing negligence on driver confirmed.

#### **IV (2006) ACC 149 (Madras HC)**

— Rash and negligent driving — Proof of vehicle being driven by 'R' — Driving licence of driver invalid — Liability of insurer — It was 'R' who got arrested from spot and FIR lodged against him — Eye-witnesses seen and apprehended him on spot — Clear evidence that 'R' was driving

offending vehicle — Conclusion arrived at by Tribunal to contrary, not based on any reliable evidence — Contention of owner and driver that vehicle at relevant time was being driven by some other person, made only to fasten liability on insurer since 'R' did not have valid licence — Findings of Tribunal set aside — Held, R responsible for causing accident — Since 'R' did not possess valid driving licence, insurer not liable.

#### **IV (2006) ACC 340 (Allahabad HC)**

— Taking passengers in contravention of provisions of law and against instructions of his master — Admittedly, driver forbidden by his employer to carry passengers on truck — Owner not vicariously liable for compensation towards any accident by such carrying — Since deceased gratuitous passenger, insurer been rightly exonerated from its liability — Driver alone liable.

#### **IV (2006) ACC 155 (Bombay HC)**

— Travelling on roof of bus — Grievous injuries sustained by falling down therefrom when driver applied brakes — Death — As per claimants, bus overcrowded, conductor insisted deceased to ride on roof top — Deceased himself responsible for said sitting even if he was directed by conductor to do same — No eye-witness of accident examined to infer that bus driven rashly and negligently — Further, no evidence that deceased paid fare for said journey — Not travelling in capacity of valid passenger — Claim petition rightly dismissed — Claimants only entitled to compensation towards no fault liability.

#### **IV (2006) ACC 294 (Uttaranchal HC) (DB)**

##### **NEGLIGENCE COMPOSITE**

Accident between bus and dumper — Both drivers seen respective vehicles approaching from opposite side from reasonable distance — Bus superfast, being driven in high speed — Serious contradiction in examination-in-chief and cross-examination regarding fact of driver of bus applying brakes — Impact of accident somewhere near centre of road — Bus driver not attempted to take bus on left side — Failure on part of both drivers to comply with obligation of taking care after noticing that other vehicle was approaching from opposite direction in high speed — Both drivers negligent — Finding of Tribunal, holding dumper driver alone responsible for accident, erroneous, set aside — Liability to be apportioned equally.

#### **IV (2006) ACC 306 (Bombay HC)**

— Apportionment of liability — Accident between jeep and parked tractor trolley — Jeep being driven at high speed despite protest of passengers, dashed against tractor trolley which was parked and stationed towards left side of road — Negligence of drivers of both vehicles proved — Case of composite negligence — Direction that 60% of claim amount to be paid by jeep driver, owner and insurer and 40% by that of tractor trolley, upheld.

#### **IV (2006) ACC 215 (Madhya Pradesh HC)**

##### **NEGLIGENCE CONTRIBUTORY**

Apportionment of liability — Challenge against — Accident while deceased crossed road in place prohibited for pedestrians — Eye-witness statement that bus came rashly and dashed against deceased — Carelessness of driver attributed for causing accident — Based on sketch showing manner of accident, clear that deceased also contributed to accident to some extent — Finding of Tribunal fixing ratio of negligence as 75% on part of bus driver and 25% on part of deceased, upheld.

#### **IV (2006) ACC 254 (Madras HC)**

— Extent of — Collision of 2 vehicles — Drivers of both vehicles driving rashly and negligently — Tribunal recorded such finding of fact based on evidence — Negligence of deceased car driver assessed to extent of 1/4, negligence of bus driver upto 3/4 — Nothing to say findings of Tribunal suffer from any infirmity or are contrary to record — Finding upheld.

#### **IV (2006) ACC 64 (Punjab & Haryana HC)**

- Truck hit motorcyclist when latter was going at his right side — Version of owner, driver that victim contributed to accident — Not acceptable — According to them, truck dashed from front — How claimant hit by rear tyre was not explained — Said version not inspiring confidence — Cannot be believed against sworn testimony of claimant and duly supported by independent eye-witness — Claimant not at all liable for contributing to accident.

#### **IV (2006) ACC 334 (Madhya Pradesh HC) (DB)**

##### **NET INCOME**

Quantum — Fatal — Enhancement — Assessment of income — Taking net income instead of gross one — Unjustified — Gross salary of deceased Rs. 10,464.94 p.m. — Tribunal computed compensation taking Rs. 7,490 as net monthly income — Further deduction of Rs. 1,490 made — Income taken as Rs. 6,000 p.m. — Possible factor of advancement in future career of victim in event of his being alive, to be taken into consideration — Income can be safely taken as Rs. 10,000 p.m. — Enhancement accordingly — Claimants entitled to Rs. 8,80,000 in place of Rs. 5,37,500 with interest @ 6% on enhanced amount.

#### **IV (2006) ACC 301 (Calcutta HC) (DB)**

##### **NET SALARY**

Quantum — Fatal — Enhancement — Income — Tribunal awarded compensation taking Rs. 4,925 as net monthly salary of deceased, instead of Rs. 5,574 as proved from various salary certificates — Unjustified — Tribunal could deduct only Rs. 90 from gross salary — Award needs to be enhanced — Taking Rs. 5,574 as basis of calculation, award amount comes to Rs. 7,83,064 — On similar terms, amount in connected appeal enhanced from Rs. 6,25,600 to Rs. 8,65,192 — Interest @ 6% p.a. on enhanced sum.

#### **IV (2006) ACC 326 (Madhya Pradesh HC) (DB)**

##### **OVERLOADING**

Negligence — Travelling on roof of bus — Grievous injuries sustained by felling down therefrom when driver applied brakes — Death — As per claimants, bus overcrowded, conductor insisted deceased to ride on roof top — Deceased himself responsible for said sitting even if he was directed by conductor to do same — No eye-witness of accident examined to infer that bus driven rashly and negligently — Further, no evidence that deceased paid fare for said journey — Not travelling in capacity of valid passenger — Claim petition rightly dismissed — Claimants only entitled to compensation towards no fault liability.

#### **IV (2006) ACC 294 (Uttaranchal HC) (DB)**

##### **OWNER OF GOODS**

Motor Vehicles Act, 1988 — Section 147(1) — Goods Vehicle — Carrying passengers — Exoneration of insurer from liability — Challenge against — Appeal by owner — Evidence on record and averment in claim petition that injured/deceased travelled along with their goods — Evidence of claimants un rebutted — Insurer statutorily liable to cover risk of such passengers — Insurer cannot escape from liability.

#### **IV (2006) ACC 285 (Madhya Pradesh HC) (DB)**

- Motor Vehicles Act, 1988 — Section 147(1) — Liability of Insurer — Deceased gratuitous passenger — Contention of claimants, deceased hired truck for taking goods and was travelling as owner of goods at relevant time — Surprisingly, no goods receipts, log book or other documentary evidence produced to show that deceased in fact had hired truck — Admittedly, at time of accident no goods were being carried — Lack of cogent evidence to prove contention — Only owner responsible to pay compensation, insurer not liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

- Motor Vehicles Act, 1988 — Section 147 (1) [Prior to 1994 amendment] — Goods vehicle — Liability of insurer towards non-fare paying passenger — Deceased hired lorry and was travelling

therein along with sand load — Cannot be said deceased unauthorised passenger — Insurance policy or any other evidence not produced by insurer to show that there is no legal liability towards such person — Insurer cannot avoid its liability.

#### **IV (2006) ACC 190 (Karnataka HC)**

##### **PARKING**

Motor Vehicles Act, 1988 — Section 117 — Maharashtra Motor Vehicles Rules, 1989 — Rule 110 — Parking places and halting stations — Power to prescribe — Under Rule 110, it is for Regional Transport Authority with permission of District Magistrate to notify stands or halting places — Decision in such regard, taken by Deputy Commissioner of Police, is *ultra vires* scope of his powers — RTA to determine whether one stand or halting place be specified for purposes of Rule 110.

#### **IV (2006) ACC 91 (Bombay HC) (DB)**

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

Motor Vehicles Act, 1988 — Section 147(1) — Goods Vehicle — Passengers travelling therein — Insurer not liable — Liability to pay and recover — Direction regarding — Challenge against — Appeal by insurer — Contention, once insurer held not liable, no such direction could be passed against it, rejected — Insurer's entire interest safeguarded by Tribunal by entitling him to recover compensation amount from vehicle owner — Order of Tribunal upheld.

#### **IV (2006) ACC 292 (Rajasthan HC)**

##### **PENAL ACTION**

Indian Penal Code, 1860 — Section 340 r/w Section 195 — Abuse of Process of Law — Making false cases — Tendency to make fast buck by filing frivolous cases is increasing day-by-day — Such tendency harmful for judiciary and society — To deal with such menace, strict view should be taken — In case it is discovered that claimant made utterly false claim petition then action under Section 340 r/w Section 195 should be taken — Exemplary costs should also be imposed upon such claimants.

#### **IV (2006) ACC 242 (Rajasthan HC)**

##### **PENALTY**

Workmen's Compensation Act, 1923 — Section 4A(3)(b) — Penalty on account of compensation — Insurer's liability to pay — Contention of insurer, no liability to reimburse penalty, not accepted — Admittedly, while insuring vehicle, insurer charged additional premium to cover all liabilities incurred by insured under Act of 1923 — Having accepted such premium, insurer cannot deny its liability.

#### **IV (2006) ACC 127 (Rajasthan HC)**

##### **PRELIMINARY ISSUE**

Motor Vehicles Act, 1988 — Section 166 — Claim Petition — Several issues framed — Decision on one issue refused as same could not be decided as preliminary issue since it involved mixed question of facts and law — Decision of issue postponed to some later date after recording of evidence — Revision petition against — Maintainability — No party can compel Tribunal to decide issue as preliminary issue — Issue raised by insurer not pure question of law or jurisdiction — Order of Tribunal not faulted — Further, impugned order does not amount to "case decided" to hold revision petition against that order maintainable — Revision not maintainable.

#### **IV (2006) ACC 137 (Allahabad HC)**

##### **PREMIUM**

Life Insurance — Group Savings Linked Scheme — Default in payment of premium by employer — Policy lapsed — Liability — Employee not to suffer on account of laches on part of employer — Employer, though acting as agent of LIC, failed to deduct amount from salary of employee and

make payment of premium to LIC — No notice of non-payment of premium given to employee — LIC liable to make payment of insured amount — Similar reliefs, as awarded under Salary Savings Scheme, entitled to be awarded to claimants in present case.

#### **IV (2006) ACC 297 (Patna HC)**

— Motor Vehicles Act, 1939 — Section 95(2)=[Section 147(2), Motor Vehicles Act, 1988] — Liability of Insurer — Limits of — Charging of extra premium to cover unlimited third party risk — Insurer charged Rs. 75 additionally, for coverage of risk on account of damage to third party property — Having charged so, insurer liable to bear entire amount of compensation payable to claimants.

#### **IV (2006) ACC 29 (Punjab & Haryana HC)**

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

Determination of dependency — Appropriate method is to take current income as dependency by rounding off same.

#### **IV (2006) ACC 32 (Punjab & Haryana HC)**

— Quantum — Fatal — Appeal for enhancement — Death of husband in road accident — Wife got appointed on compassionate grounds and is getting pay — Such financial assistance, by way of salary on her appointment, cannot be ignored — Despite that Single Judge enhanced compensation from Rs. 1,72,000 to Rs. 2,25,000 — Amount just and reasonable — No further enhancement.

#### **IV (2006) ACC 15 (Rajasthan HC) (DB)**

##### **PROOF**

Accident claim — Damage to vehicle — Proof of damage — Absolutely no evidence on record to hold that any such damage suffered — Claim rightly rejected by Tribunal.

#### **IV (2006) ACC 47 (Punjab & Haryana HC)**

— Claim Petition — Case false and fabricated — Petition dismissed — Hence appeal — Right hand crushed — No proof that such injury was sustained in motor vehicle accident — Illusive answers, vague story, lack of documentary evidence, contradictory testimonies clearly expose that case is falsely fabricated to gain compensation from Tribunal — Rightly dismissed — Interim compensation of Rs. 25,000 paid to claimant deserves to be returned to insurer.

#### **IV (2006) ACC 242 (Rajasthan HC)**

— Motor Vehicles Act, 1988 — Section 140 — Interim Compensation — Personal injury — Tribunal awarded Rs. 25,000 — Hence appeal by insurer — Contention, mere filing of application under Section 140 not sufficient, obligatory upon claimant to prove fact of having incurred permanent disablement — Rejected — Tribunal undertook extensive discussion regarding contention of parties and documentary evidence while awarding compensation — Act itself mandates that claimant not under obligation to prove any negligence on part of owner of vehicle — Order of Tribunal upheld.

#### **IV (2006) ACC 252 (Andhra Pradesh HC)**

— Motor Vehicles Act, 1988 — Sections 147, 151 — Liability of Insurer — Insurance policy — Burden to prove that vehicle insured with named insurer — On claimants — Merely because claimant chooses to implead particular insurer as insurer of offending vehicle, it cannot be presumed that same was insured with that insurer — Claimants could not prove that offending vehicle was insured with appellants by date of accident — Tribunal erroneously held appellants liable.

#### **IV (2006) ACC 5 (Andhra Pradesh HC)**

— Negligence — Rash and negligent driving — Proof — O.P. never denied assertions of claimants regarding negligence of driver of offending vehicle — No issue framed — In its absence, no

burden can be rested on claimants to prove accident due to negligent driving — Claimants need not adduce any evidence to that effect.

#### **IV (2006) ACC 76 (Gauhati HC) (DB)**

— Negligence — Rash and negligent driving — Proof — Oral and documentary evidence available, for Tribunal to conclude that accident occurred only due to rash and negligent driving of bus driver — Evidence of independent eye-witness also to same effect — Finding of Tribunal fixing negligence on driver confirmed.

#### **IV (2006) ACC 149 (Madras HC)**

##### **PROPERTY DAMAGE**

Accident claim — Damage to vehicle — Proof of damage — Absolutely no evidence on record to hold that any such damage suffered — Claim rightly rejected by Tribunal.

#### **IV (2006) ACC 47 (Punjab & Haryana HC)**

— Motor Vehicles Act, 1939 — Section 110A — Claim Petition — Sustainability of award — Accident between bus and dumper — Claim petition by SRTC — Expenses incurred on repairs and idle charges per day sought — Further claim for recovery of *ex gratia* payment made by SRTC to relatives of deceased and injured persons — As per evidence on record, Rs. 27,000 to be awarded towards repairs, etc. — Since bus driver contributed to accident, 50% of said amount payable — *Ex gratia* payment made to injured not awardable — Such expense being not damage to tangible property arising directly out of accident — Payment of Rs. 30,000 made to dependants of deceased, to be adjusted against compensation payable to them.

#### **IV (2006) ACC 306 (Bombay HC)**

##### **PUBLIC PLACE**

Motor Vehicles Act, 1988 — Section 2(24) — Workmen's Compensation Rules, 1924 — Rule 20 — Public place — Injury in accident arising out of and during course of employment — Place of accident whether public place or inside garage/workshop not at all relevant — Compensation payable.

#### **IV (2006) ACC 127 (Rajasthan HC)**

##### **QUANTUM FATAL**

Appeal for enhancement — Death of husband in road accident — Wife got appointed on compassionate grounds and is getting pay — Such financial assistance, by way of salary on her appointment, cannot be ignored — Despite that Single Judge enhanced compensation from Rs. 1,72,000 to Rs. 2,25,000 — Amount just and reasonable — No further enhancement.

#### **IV (2006) ACC 15 (Rajasthan HC) (DB)**

— Deceased house-wife — Tribunal awarded Rs. 2,28,300 with interest — Appeal by insurer challenging quantum — Income to be assessed at Rs. 1,500 p.m. — Loss of dependency comes to Rs. 1,51,200 — Rs. 10,000 towards loss of expectancy and Rs. 3,000 funeral expenses — Claimants entitled to Rs. 1,64,200 as against Rs. 2,28,300.

#### **IV (2006) ACC 52 (Karnataka HC)**

— Enhancement — Assessment of income — Taking net income instead of gross one — Unjustified — Gross salary of deceased Rs. 10,464.94 p.m. — Tribunal computed compensation taking Rs. 7,490 as net monthly income — Further deduction of Rs. 1,490 made — Income taken as Rs. 6,000 p.m. — Possible factor of advancement in future career of victim in event of his being alive, to be taken into consideration — Income can be safely taken as Rs. 10,000 p.m. — Enhancement accordingly — Claimants entitled to Rs. 8,80,000 in place of Rs. 5,37,500 with interest @ 6% on enhanced amount.

#### **IV (2006) ACC 301 (Calcutta HC) (DB)**

— Enhancement — Income — Tribunal awarded compensation taking Rs. 4,925 as net monthly

salary of deceased, instead of Rs. 5,574 as proved from various salary certificates — Unjustified — Tribunal could deduct only Rs. 90 from gross salary — Award needs to be enhanced — Taking Rs. 5,574 as basis of calculation, award amount comes to Rs. 7,83,064 — On similar terms, amount in connected appeal enhanced from Rs. 6,25,600 to Rs. 8,65,192 — Interest @ 6% p.a. on enhanced sum.

#### **IV (2006) ACC 326 (Madhya Pradesh HC) (DB)**

— Enhancement — No scope for — Deceased practicing Advocate — Earning about Rs. 2,000 p.m. — Additionally, he was supervising his agricultural land — On account of death, agricultural income decreased considerably — Tribunal awarded Rs. 1,44,000 on account of professional income and Rs. 1,20,000 as compensation on account of loss of agricultural income besides award under conventional heads — Sum of Rs. 2,80,000 awarded with interest — Award upheld.

#### **IV (2006) ACC 64 (Punjab & Haryana HC)**

##### **QUANTUM FATAL 5 YEARS**

Enhancement — Claimants, parents — Tribunal awarded Rs. 52,000 — Same on lower side — Compensation to be enhanced to Rs. 90,000 with interest @ 6% p.a. on enhanced sum.

#### **IV (2006) ACC 215 (Madhya Pradesh HC)**

##### **QUANTUM FATAL 8 YEARS**

Enhancement — Tribunal awarded Rs. 50,000 — Hence appeal — Appellant-claimants lost their only son — While awarding compensation, Court has to look upon many uncertain factors and to take overall picture and form estimate — Possibility of deceased becoming successful in life not ruled out — Taking notional income of non-earning person as Rs. 15,000 p.a. and applying multiplier of 10, quantum would be Rs. 1,50,000 — Enhancement accordingly — Interest @ 7.5% on enhanced sum.

#### **IV (2006) ACC 36 (Madras HC)**

##### **QUANTUM FATAL 13 YEARS**

Appeal for Enhancement — Deceased resident of small village, selling grass only, earning Rs. 20-25 per day with help of 2 more brothers — Share of deceased cannot be more than Rs. 6-7 per day — Tribunal rightly determined dependency at Rs. 3 per day and applied multiplier of 15 — Compensation of Rs. 16,200 thus, though appearing to be too meagre, justified.

#### **IV (2006) ACC 203 (Rajasthan HC)**

##### **QUANTUM FATAL 15 YEARS**

Deceased educated upto VI class, used to deal in sale of biscuits and breads — Rs. 60,000 claimed — Tribunal awarded Rs. 50,000 — Award just and proper, upheld.

#### **IV (2006) ACC 155 (Bombay HC)**

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

Appeal for Enhancement — Tribunal awarded Rs. 70,000 compensation — No evidence regarding income of deceased — Deceased able-bodied young men, were to marry soon and after that their contributions towards family would decrease substantially — Income, thus presumed at Rs. 1,000 p.m. — Multiplier of 16 applied — Hence compensation of Rs. 70,000 — Assessment adequate — Award upheld.

#### **IV (2006) ACC 143 (Punjab & Haryana HC)**

— Enhancement — Determination of income of deceased — Choice of appropriate multiplier — Tribunal awarded Rs. 93,000 by taking dependency of claimants at Rs. 6,000 p.a. and multiplier of 13 — Claimants parents — Multiplier should be chosen on basis of age of younger of claimants *i.e.*, mother aged 40 years — Suitable multiplier is 16 — Allegation regarding income not proved by documentary evidence — As per Second Schedule, income can be assessed at Rs. 15,000 p.a. — Dependency Rs. 10,000 p.a. — Rs. 15,000 each towards loss of estate and loss of love and

affection — Compensation enhanced to Rs. 1,75,000 with interest @ 9% p.a.

**IV (2006) ACC 173 (Andhra Pradesh HC)**

**QUANTUM FATAL 25 YEARS**

Appeal for enhancement — Contention, choice of multiplier and 1/3rd deduction towards personal expenses done wrongly — Tribunal awarded Rs. 1,82,800 — Income of deceased Rs. 1,000 p.m. — Belonging to low-income group — No illegality or mistake in deducting 1/3rd of income on account of self expenditure — In view of age, multiplier of 17 as adopted by Tribunal, not inappropriate — Award fair and adequate — Upheld.

**IV (2006) ACC 74 (Rajasthan HC)**

— Claimants widow and brother — Salary drawn at accident time Rs. 3,500 p.m. — Multiplier of 17 applied — Use of multiplier not inappropriate — Award of Rs. 3,49,500 cannot be said to be illegal or unjustified.

**IV (2006) ACC 76 (Gauhati HC) (DB)**

**QUANTUM FATAL 27 YEARS**

Claimant father, aged 50 years — Salary of deceased Rs. 2,700 p.m. — Multiplier of 11 proper, in view of age of claimant — Compensation to tune of Rs. 3,30,100 correctly awarded.

**IV (2006) ACC 76 (Gauhati HC) (DB)**

**QUANTUM FATAL 30 YEARS**

Appeal for enhancement — Income of deceased Rs. 2,700 p.m. — Dependency Rs. 1,750 p.m. — Multiplier of 20 applied — Award of Rs. 2,50,000 just and proper, no interference required.

**IV (2006) ACC 306 (Bombay HC)**

— Enhancement — Monthly dependency of family Rs. 1,200 p.m. — Tribunal applied multiplier of 14 and awarded Rs. 2,17,000 — Contention, Tribunal failed to consider future prospects of income and also proper multiplier not applied — Deceased low paid labourer, average age of Indian 70 years, multiplier of 18 appropriate — Tribunal awarded Rs. 15,000 towards loss of love and affection — On lower side keeping in view number of dependents — Rs. 10,000 consortium to wife and Rs. 5,000 each to 3 minor children of deceased and his mother to be awarded towards love and affection — Compensation enhanced to Rs. 2,89,600 with interest @ 6% on enhanced sum.

**IV (2006) ACC 58 (Rajasthan HC)**

**QUANTUM FATAL 31 YEARS**

Enhancement — Towards income — Deceased agriculturists, engaged in cultivation of land — Tribunal awarded Rs. 2,95,000 by taking income as Rs. 2,100 p.m. — Proper assessment of income leads to Rs. 3,000 p.m. — Multiplier of 17 proper — Dependency Rs. 4,08,000, Rs. 10,000 conventional damages — Claimants entitled to Rs. 4,18,000.

**IV (2006) ACC 47 (Punjab & Haryana HC)**

**QUANTUM FATAL 32 YEARS**

Enhancement — Deceased Head constable, drawing salary of Rs. 1,479.30 at time of death — Tribunal determined dependency at Rs. 900 p.m. and multiplier of 20, awarded Rs. 2,20,000 — Future prospects of deceased in his service career not been considered at all — Appropriate method to determine dependency is to take current income as dependency by rounding off same — Dependency Rs. 1,500 p.m. — Multiplier of 20, on higher side, 16 appropriate — Rs. 12,000 towards loss of consortium and performance of last rites — Total compensation comes to Rs. 3,00,000 with interest @ 6% p.a. on enhanced amount.

**IV (2006) ACC 32 (Punjab & Haryana HC)**

— Appeal by owner of vehicle challenging quantum — Contention, compensation excessive, not

acceptable — As per evidence, Tribunal reasonably took income as Rs. 3,000 p.m. — Multiplier of 13 applied — Rs. 15,000 awarded as usual amount — In all, Rs. 3,27,000 arrived at — Award not faulted — Upheld.

#### **IV (2006) ACC 306 (Bombay HC)**

— Enhancement — Towards choice of multiplier — Tribunal adopted multiplier of 10 — Looking to age of deceased, multiplier of 14 appears to be appropriate — Income Rs. 3,000 p.m. — Loss of income comes to Rs. 3,36,000 — Rs. 30,000 towards conventional heads — Compensation enhanced from Rs. 2,70,000 to Rs. 3,66,000 with 6% p.a. interest.

#### **IV (2006) ACC 71 (Rajasthan HC)**

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

Annual income of deceased Rs. 18,000 — Deducting 1/3rd, contribution to family arrived at Rs. 12,000 — Relevant multiplier 16 — Loss of dependency Rs. 1,92,000 — Rs. 10,000 towards conventional damages — Claimants entitled to total of Rs. 2,02,000 with interest @ 7.5% p.a.

#### **IV (2006) ACC 303 (Andhra Pradesh HC)**

— Enhancement — Towards income and multiplier — Deceased running electrical equipment shop, earning Rs. 3,000 p.m. — Tribunal took income of deceased at Rs. 2,500 p.m. — Instead of deducting Rs. 833 as 1/3rd of income, Tribunal took only Rs. 1,600 as income — Improper — Income to be taken at Rs. 1,667 p.m. — In consideration of age of deceased and claimant wife aged 31 years, multiplier of 16, not 15 as applied by Tribunal, applicable — Compensation arrived at Rs. 3,52,064 — After deducting 25% towards negligence of deceased, claimants entitled to Rs. 2,64,048.

#### **IV (2006) ACC 254 (Madras HC)**

— Appeal by insurer challenging quantum — Tribunal awarded Rs. 6,91,500 — Contention, award on higher side — Deceased agriculturist, owned 1.07 hectares land — Income assessed at Rs. 5,000 p.m. — 1/3rd deduction towards personal expenses — Multiplier of 16 adopted in view of age of deceased and claimants — Amount cannot be said to be excessive or exorbitant — Award based on evidence, upheld.

#### **IV (2006) ACC 191 (Madhya Pradesh HC)**

##### **QUANTUM FATAL 39 YEARS**

Choice of proper multiplier — Tribunal applied multiplier of 19 and awarded Rs. 5,40,000 compensation — No sum awarded towards non-pecuniary damages except Rs. 6,480 funeral expenses — Choice of multiplier wrong — Ought to have chosen 18 — Pecuniary damages comes to Rs. 5,05,440 — Rs. 15,000 each towards loss of consortium to wife and loss of love and affection experienced by parents, brother, sisters and children — Funeral expenses reduced to Rs. 4,560 — Total amount of Rs. 5,40,000 fixed by Tribunal remains unaltered — Payable with interest @ 9% p.a.

#### **IV (2006) ACC 149 (Madras HC)**

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

Award excessive — Reduction — Tribunal assessed income at Rs. 2,20,000 p.a. and awarded Rs. 20,70,000 compensation — Assessment of income improper — Income from other sources, other than that earned from business of deceased also considered — Correct income as evident from tax returns, Rs. 1,27,500 p.a. — Multiplier of 14 correctly applied — Rs. 12,000 towards conventional heads — Compensation reduced to Rs. 12,02,000 — Such amount just, reasonable and proper.

#### **IV (2006) ACC 114 (Madhya Pradesh HC) (DB)**

— Enhancement — Selection of appropriate multiplier — Pertinent that no age proof placed by claimants except oral evidence — Tribunal applied multiplier of 12 and awarded Rs. 3 lacs — Multiplier chosen without any explanation — Unjustified — For age group of 40-45, multiplier of

15 can safely be accepted — Enhancement accordingly — Claimants entitled to Rs. 3,72,000.

**IV (2006) ACC 266 (Bombay HC)**

**QUANTUM FATAL 44 YEARS**

Enhancement — Choice of proper multiplier — Claimant wife, aged 39 years — Deceased goldsmith, income can be taken at Rs. 5,000 p.m. — Annual dependency Rs. 40,000 — Tribunal awarded Rs. 5,89,600 by applying multiplier of 12.79 — Unjustified — Taking into account, age of deceased and claimants, and overall aspects of case, proper multiplier is 15 — Compensation accordingly enhanced to Rs. 6,78,000 — Rate of interest on original award @ 12% p.a. and that on enhanced sum @ 7.5% p.a.

**IV (2006) ACC 246 (Madras HC)**

**QUANTUM FATAL 45 YEARS**

Enhancement — Tribunal awarded Rs. 1,12,068 after taking income at Rs. 1,000 p.m. and multiplier of 13 — Plea that deceased used to earn Rs. 1,500 p.m. — Nothing to doubt version of claimant — Statement of claimant widow reliable and worthy of credence — Widow aged 35 years — In view of age of widow and deceased, multiplier of 15 proper — Calculated on this basis, widow entitled to Rs. 1,94,500.

**IV (2006) ACC 285 (Madhya Pradesh HC) (DB)**

**QUANTUM FATAL 50 YEARS**

Enhancement — Choice of multiplier and non pecuniary damages — Tribunal awarded Rs. 1,32,600 by adopting multiplier of 7 — No amount awarded for funeral expenses and for loss of love and affection — In view of age of deceased, multiplier of 10 proper — Rs. 15,000 towards loss of consortium, Rs. 10,000 towards loss of paternal love and affection and Rs. 2,000 funeral expenses have to be added — Compensation enhanced to Rs. 1,95,000 with interest @ 6% p.a. on enhanced amount.

**IV (2006) ACC 188 (Rajasthan HC)**

— Enhancement — Tribunal assessed income of deceased at Rs. 1,000 p.m., while she earned Rs. 1,200 p.m. — Assessment on lower side — Appropriate multiplier is of 13 — Claimants entitled to Rs. 1,15,100 instead of Rs. 97,068 as awarded by Tribunal.

**IV (2006) ACC 285 (Madhya Pradesh HC) (DB)**

**QUANTUM FATAL 53 YEARS**

Appeal for enhancement — As per evidence, dependency arrived at Rs. 3,300 p.m. — Multiplier of 7 — Compensation of Rs. 3,00,000 proper.

**IV (2006) ACC 306 (Bombay HC)**

**QUANTUM FATAL 65 YEARS**

Enhancement — Income not assessed by Tribunal, only sum of Rs. 60,000 awarded towards loss of consortium, love and affection, funeral expenses, etc. — Evidence that deceased used to contribute towards income of family — Notional income ought to have been taken into consideration — Large number of family members — Deduction towards personal expenses 1/4th instead of 1/3rd — In view of age of deceased and children, multiplier of 8 proper — Rs. 10,000 towards funeral expenses, etc. — Claimants entitled to Rs. 1,00,000 compensation — Interest @ 8% p.a. on enhanced sum.

**IV (2006) ACC 338 (Madhya Pradesh HC)**

**QUANTUM PERSONAL INJURY**

Enhancement — Amount towards loss of future income — Serious injuries on head and eye — Fracture on parietal bone of head — Blood clotting in right eye and due to injuries, victim suffered from headache and swelling in eye — Disability 30% — Tribunal awarded Rs. 20,000 towards

loss of future income and total Rs. 45,000 — Victim aged 40 years, earning Rs. 2,000 p.m. — Multiplier of 15 applicable — 30% loss of income comes to Rs. 1,20,000 — Rs. 20,000 already awarded — Claimant entitled to Rs. 75,000 over and above award of Tribunal — Interest @ 6% p.a. on enhanced amount.

#### **IV (2006) ACC 212 (Madhya Pradesh HC)**

— Enhancement — Amount towards pain and suffering — 5 injuries suffered as per injury certificate — 2 grievous injuries and fracture — 40% disability — Rs. 25,000 awarded towards pain and sufferings — Amount needs to be increased to Rs. 36,000.

#### **IV (2006) ACC 266 (Bombay HC)**

— Enhancement — Amount towards pain and sufferings — Fracture of left hand and right leg — Bleeding injury to her abdomen — Treatment taken for 15 days, hospitalisation too — 45% permanent disability suffered — Tribunal awarded Rs. 75,000 — Rs. 15,000 awarded towards pain and sufferings — Same needs to be moderately increased — In view of injuries, claimants entitled to Rs. 40,000 under this head — Enhancement accordingly.

#### **IV (2006) ACC 266 (Bombay HC)**

— Enhancement — Amount towards pain and sufferings — Victim aged 50 years — Victim suffered contour lacerated wound over Rt. temporal region with fracture — Tenderness of spinal cord — Permanent disability 35% — Tribunal awarded Rs. 12,000 towards pain and sufferings, in total Rs. 75,000 — In regard to injuries sustained, amount of Rs. 12,000 needs to be enhanced to Rs. 32,000 — Claimants entitled to Rs. 95,000.

#### **IV (2006) ACC 266 (Bombay HC)**

— Enhancement — Fracture of both bones of right leg — Limb disability 20%, total body disability 8% — Tribunal awarded Rs. 40,000 — Needs enhancement — Petitioner entitled for Rs. 30,000 for pain and agony, Rs. 10,000 for medical expenses, Rs. 10,000 for loss of amenities, Rs. 25,000 for loss of future income, Rs. 5,000 for operation and Rs. 6,000 for loss of income during treatment — Compensation enhanced to Rs. 86,000 with interest @ 6% p.a.

#### **IV (2006) ACC 223 (Karnataka HC)**

— Enhancement — Fracture of femur bone of right leg — Tribunal awarded Rs. 20,000 — Victim 9 years old girl — Case of grievous injury causing pain and suffering — No evidence pertaining to deformity — Leg plastered for 8-10 weeks — Compensation enhanced to Rs. 38,000 with interest @ 6% p.a.

#### **IV (2006) ACC 215 (Madhya Pradesh HC)**

— Enhancement — Fracture of L-1 and L-5 bones — Tribunal awarded Rs. 3,050 compensation with interest @ 8% p.a. — Amount towards medical expenses, *i.e.*, Rs. 500 on lower side — No award towards expenses incurred on attenders — Compensation enhanced to Rs. 6,000 — Interest @ 6% p.a. on enhanced amount.

#### **IV (2006) ACC 68 (Madhya Pradesh HC)**

— Enhancement — Fracture of left leg, left hand, injuries on fingers, hand and heel — 3 stitches on eyebrow and 10-12 stitches on head — 25% permanent disability — Leg shortened by 4 cms — Tribunal awarded Rs. 61,000 — Hence appeal — Application of formula under Item 5 of 2nd Schedule of Act — Victim 27 years old, earning Rs. 3,000 p.m. — Compensation comes to Rs. 1,62,000 — Enhancement accordingly — Interest @ 6% p.a. on enhanced amount.

#### **IV (2006) ACC 121 (Rajasthan HC)**

— Enhancement — Injuries on shoulder, head and left hand, besides fracture in left leg and various other injuries — Tribunal awarded Rs. 50,000 — Case of grievous injury — On account of fracture, victim must be plastered for about 8-10 weeks, suffered pain and suffering — Victim hospitalised and considering overall charges, he is entitled to Rs. 20,000 as medical expenses — Tribunal awarded only Rs. 5,000 under this head — Compensation enhanced to Rs. 65,000, with

interest @ 6%.

**IV (2006) ACC 215 (Madhya Pradesh HC)**

— Enhancement — Right leg below knee amputated — Permanent disability 64% — Pecuniary loss, after taking into consideration age, disability, loss of earning capacity, multiplier, etc., assessed at Rs. 1,56,670 — Rs. 25,000 each towards pain and sufferings and medical expenses — Rs. 5,000 each towards special diet and attendant — Claimants entitled to Rs. 2,16,670 in place of Rs. 1,08,727.

**IV (2006) ACC 285 (Madhya Pradesh HC) (DB)**

— Enhancement — Serious injuries, left knee completely smashed — Knee operated several times, hospitalisation for long period — Left leg shortened by 5 c.m. — Patella of left leg removed — Victim doing utensils business — Shop remained closed for 2 years due to said accident — Tribunal awarded Rs. 1,30,000 — Considering age and disability suffered by victim, amount enhanced to Rs. 1,75,000 — Rs. 10,000 towards damages under various heads — Rs. 1,85,000 payable with interest @ 6% p.a.

**IV (2006) ACC 215 (Madhya Pradesh HC)**

— Enhancement — Severe fracture, injuries on right femur — Remained under treatment in hospital for period of 3 months — Tribunal awarded Rs. 25,000 — Award on lower side — Disability certificate showing disability to extent of 55% cannot be discarded — Victim aged 40 years, notional income Rs. 15,000 p.a. — Victim entitled to Rs. 1,07,250 — Rs. 2,500 towards pain and suffering — Compensation enhanced to Rs. 1,09,250 payable with interest @ 9% p.a.

**IV (2006) ACC 144 (Calcutta HC) (DB)**

— Enhancement — Simple injuries suffered without any fracture or permanent disablement — However, victim hospitalised for about 7-8 days — Tribunal awarded Rs. 3,000 — Proper compensation for such injury is Rs. 10,000 with interest @ 6%.

**IV (2006) ACC 215 (Madhya Pradesh HC)**

— Enhancement — Towards future loss of income and earning power — Thigh bone fractured, nerves cut, malunion of bones — Functioning of leg and hand much restricted since left side of brain affected — Disability total and permanent, upto 100% — Hospitalisation for about 4 months — Victim 52 years old at accident time, working as Sub-Inspector of Police — Dismissal from service even before his superannuation, because of accident — Tribunal accepted 90% disability, awarded compensation accordingly — Rs. 2,66,000 awarded — In view of age, dismissal from service, remaining period of service and possibility of his future earning capacity and his promotion as Inspector, amount under head “loss of income and earning capacity” needs to be enhanced — Rs. 40,000 to be added to award of Tribunal — Amount enhanced to Rs. 3,06,000 with interest @ 12% p.a. — Interest @ 7.5% p.a. on enhanced amount.

**IV (2006) ACC 16 (Madras HC)**

— Enhancement — Victim aged 8 years — 2 teeth broken in accident — Not a case of permanent disability — Case of injury causing pain and suffering — Compensation enhanced from Rs. 6,000 to Rs. 12,000 with interest @ 6% p.a.

**IV (2006) ACC 215 (Madhya Pradesh HC)**

— Enhancement — Victim aged 30 years — Fracture in collar bone and clavical bone, head injury — Victim went into coma — Paralysis in whole body despite extensive medical treatment — Unable to walk, left completely bed ridden — 100% disability — Case where injury is worst than death — No chances of recovery — Evidence that monthly income of victim Rs. 3,000 — Tribunal wrongly took same at Rs. 1,800 and awarded Rs. 4,36,000 — In view of injuries, number of dependants and amount spent on treatment, claimants entitled to total compensation of Rs. 5,00,000 in lump sum — Interest @ 6% p.a. on enhanced sum.

**IV (2006) ACC 171 (Madhya Pradesh HC)**

- Enhancement — Victim minor, aged 4 years — Left leg amputated above knee, victim operated upon — Tribunal awarded Rs. 55,659 — In view of injuries, amount undisputedly on lower side — Deserves enhancement — Claimant entitled to compensation on account of medical expenses, expenses on attenders, permanent disability, pain and suffering etc. — Accident occurred 12 years ago — Claimant entitled to Rs. 50,000 each towards pain and suffering, loss of marriage prospects and loss of expectation of life — Rs. 1,00,000 towards loss of amenities of life and Rs. 1,50,000 towards amputation — Rs. 90,000 towards past and future medical expenses — In all, claimant entitled to Rs. 5,00,000 compensation with interest @ 6% p.a.

#### **IV (2006) ACC 61 (Madhya Pradesh HC)**

- Enhancement — Victim suffered only one fracture, on pelvic bone — Tribunal awarded Rs. 10,000 — Award on lower side — In present facts and circumstances amount enhanced to Rs. 20,000 along with interest @ 6% on enhanced sum.

#### **IV (2006) ACC 215 (Madhya Pradesh HC)**

- Enhancement — Victim sustained injuries in backbone, face disfigured — Permanent disability 12% — Pain in back, movement of femur bone restricted — Hospitalisation for long period — Victim remained unemployed for more than 12 months, due to such accident — Tribunal awarded Rs. 35,000 — Deserves enhancement — Victim young person, aged 27 years — Physical impairment likely to increase with age — Compensation of Rs. 1,00,000 just, proper and adequate.

#### **IV (2006) ACC 208 (Madhya Pradesh HC) (DB)**

- Crush injuries to left hand, fractures of metacarpal and concussive head injuries — Fingers shortened — Disability of total body 30% — Income of victim Rs. 3,000 p.m. — Rs. 1,29,600 to be awarded towards loss of future income, Rs. 30,000 each towards pain and agony, medical expenses and loss of amenities — Petitioner entitled to Rs. 2,28,600 instead of Rs. 1,32,000 with interest @ 6% p.a.

#### **IV (2006) ACC 210 (Karnataka HC)**

- Extent of contributory negligence of injured himself — Appeal for enhancement of compensation — Injured standing on rear stair-case of bus — Even if taken that bus driven rashly and negligently, conduct of injured cannot be ignored — Tribunal assessed his negligence upto 70% — Total compensation assessed at Rs. 50,000, 70% of same comes to Rs. 15,000 — Since it was less than statutory compensation under 'no fault liability', Tribunal awarded Rs. 25,000 — Assessment not in any manner erroneous — Upheld.

#### **IV (2006) ACC 129 (Punjab & Haryana HC)**

- Fracture of left hip bone, injuries on shoulder and knee joint — Victim remained immobilized over period of 45 days — Tribunal awarded Rs. 10,000 only — Award too meagre — In view of nature of injury and prolonged treatment, just amount payable to claimant would be Rs. 75,000 — Interest @ 8% p.a.

#### **IV (2006) ACC 338 (Madhya Pradesh HC)**

- Grievous injuries, fracture in right knee, contusion of muscles suffered — Permanent disability upto 35% — Tribunal awarded Rs. 30,000 towards permanent disability, Rs. 7,500 towards sufferings and Rs. 35,000 medical expenses, in all Rs. 71,500 — Absence of contrary material to disbelieve proper assessment made by Tribunal — Award upheld.

#### **IV (2006) ACC 96 (Madras HC)**

- Setting aside finding of Tribunal holding victim contributory negligent and reducing award amount proportionately — Entitlement to claim whole of award amount — In regard to nature of injuries, medical expenses, etc., Tribunal awarded Rs. 4,15,000 — Claimant entitled to whole of this amount, with interest @ 6% p.a. on enhanced amount.

#### **IV (2006) ACC 334 (Madhya Pradesh HC) (DB)**

#### **RAILWAY CLAIM**

Railways Act, 1989 — Sections 55, 56, 82, 84 and 85 — Damage to Consignment — Liability of Railways — Refusal of consignee to take delivery — Loss of right to ask for damages — Claimant, dissatisfied with assessment of damages, failed to take delivery of goods inspite of legal liability upon him to do so, under Section 82 — Having failed to execute said liability, claimant now estopped from claiming damages.

#### **IV (2006) ACC 236 (Madras HC)**

##### **REVISION**

Motor Vehicles Act, 1988 — Section 166 — Claim Petition — Several issues framed — Decision on one issue refused as same could not be decided as preliminary issue since it involved mixed question of facts and law — Decision of issue postponed to some later date after recording of evidence — Revision petition against — Maintainability — No party can compel Tribunal to decide issue as preliminary issue — Issue raised by insurer not pure question of law or jurisdiction — Order of Tribunal not faulted — Further, impugned order does not amount to “case decided” to hold revision petition against that order maintainable — Revision not maintainable.

#### **IV (2006) ACC 137 (Allahabad HC)**

— Motor Vehicles Act, 1988 — Sections 149(2) and 173 — Code of Civil Procedure, 1908 — Section 115 — Appeal — Right to defend action only on certain limited grounds — Revision application — Maintainability — Insurer filed revision under Section 115 of Code against award of Motor Accident Claims Tribunal — Revision lies only when there is no right of appeal — Where statute provides appeal, judgment cannot be challenged by filing revision under Section 115 — In instant case, insurer had statutory right of appeal under Section 173, though subject to certain restrictions and limitations mentioned under Section 149(2) of Act of 1988 — Revision application not maintainable.

#### **IV (2006) ACC 161 (Jharkhand HC) (DB)**

##### **ROOF TOP TRAVELLING**

Negligence — Travelling on roof of bus — Grievous injuries sustained by felling down therefrom when driver applied brakes — Death — As per claimants, bus overcrowded, conductor insisted deceased to ride on roof top — Deceased himself responsible for said sitting even if he was directed by conductor to do same — No eye-witness of accident examined to infer that bus driven rashly and negligently — Further, no evidence that deceased paid fare for said journey — Not travelling in capacity of valid passenger — Claim petition rightly dismissed — Claimants only entitled to compensation towards no fault liability.

#### **IV (2006) ACC 294 (Uttaranchal HC) (DB)**

##### **SAME DAY INSURANCE**

Insurance Policy — Commencement — In absence of contract to contrary, policy effective from mid night of day on which it is taken — In present case, column relating to commencement of policy did not contain any stipulation as to time — Contract to contrary non-existent — Cannot be said policy effective from particular time on date of issuance — Insurer liable.

#### **IV (2006) ACC 179 (Andhra Pradesh HC)**

##### **SALARY**

Quantum — Fatal — Enhancement — Income — Tribunal awarded compensation taking Rs. 4,925 as net monthly salary of deceased, instead of Rs. 5,574 as proved from various salary certificates — Unjustified — Tribunal could deduct only Rs. 90 from gross salary — Award needs to be enhanced — Taking Rs. 5,574 as basis of calculation, award amount comes to Rs. 7,83,064 — On similar terms, amount in connected appeal enhanced from Rs. 6,25,600 to Rs. 8,65,192 — Interest @ 6% p.a. on enhanced sum.

#### **IV (2006) ACC 326 (Madhya Pradesh HC) (DB)**

##### **STRUCTURED COMPENSATION**

Motor Vehicles Act, 1988 — Sections 163A and 166 — Claim Petition — Treating of petition filed under Section 166 as that under Section 163A of Act — Justifiability — Claimants filed petition under Section 166, claiming income of deceased as more than Rs. 40,000 p.a. — During proceedings prayer made to treat petition under Section 163A by restricting income to less than Rs. 40,000 — In view of claim of claimants themselves, about income being more than said sum, Tribunal not justified in accepting prayer and treating petitions under Section 163A and awarding compensation accordingly — Impugned order set aside — Matter remanded.

#### **IV (2006) ACC 125 (Punjab & Haryana HC) (DB)**

— Motor Vehicles Act, 1986 — Sections 163A, 166 and 140 — Code of Civil Procedure, 1908 — Order 23 Rule 1 — Claim Petition — Abandonment of part of claim — Section 163A gives right to claimants to claim income of deceased upto Rs. 40,000 p.a. — In present case, petitioners scaled down their claim of income from Rs. 4,000 p.m. to Rs. 3,300 p.m. — No prejudice caused to respondents as lesser compensation is now claimed — Application seeking amendment of claim petition seeking abandonment of part of claim allowed.

#### **IV (2006) ACC 146 (Punjab & Haryana HC)**

— Motor Vehicles Act, 1988 — Sections 163A — Special Provision for Payment of Compensation — Exemption to plead and prove negligence of any person including driver of vehicle — Claim petition in respect of death of driver — Claimants not at all required to plead and prove wrongful act or neglect of driver — Act itself contains provisions giving right to claimants to claim compensation against even those persons who were not at fault — Owner/insurer of vehicle liable.

#### **IV (2006) ACC 213 (Rajasthan HC)**

##### **SUPPRESSION OF MATERIAL FACTS**

Insurance Act, 1938 — Section 45 — Life Insurance — Claim repudiated for alleged suppression of material facts — Justifiability — Death of insured 2 years after policy by committing suicide — Case of insurer, deceased suffered from mental depression at time of taking of policy, underwent ECG, same not disclosed hence insurer not liable, cannot be accepted — No evidence led by insurer about deceased suffering from mental depression — Admittedly, doctor who medically examined assured, not found any such symptom — Omission to mention doing of ECG, can at best be an inaccurate or false statement not on material matter — Mere inaccuracy of statement, no ground for repudiating policy after 2 years — Insurer liable.

#### **IV (2006) ACC 192 (Punjab & Haryana HC)**

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#### **IV (2006) ACC 182 (Orissa HC) (DB)**

— **Section 45** — Life Insurance — Claim repudiated for alleged suppression of material facts — Justifiability — Death of insured 2 years after policy by committing suicide — Case of insurer, deceased suffered from mental depression at time of taking of policy, underwent ECG, same not disclosed hence insurer not liable, cannot be accepted — No evidence led by insurer about deceased suffering from mental depression — Admittedly, doctor who medically examined assured, not found any such symptom — Omission to mention doing of ECG, can at best be an inaccurate or false statement not on material matter — Mere inaccuracy of statement, no ground for repudiating policy after 2 years — Insurer liable.

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#### **IV (2006) ACC 306 (Bombay HC)**

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#### **IV (2006) ACC 91 (Bombay HC) (DB)**

- **Section 140** — Interim Compensation — Personal injury — Tribunal awarded Rs. 25,000 — Hence appeal by insurer — Contention, mere filing of application under Section 140 not sufficient, obligatory upon claimant to prove fact of having incurred permanent disablement — Rejected — Tribunal undertook extensive discussion regarding contention of parties and documentary evidence while awarding compensation — Act itself mandates that claimant not under obligation to prove any negligence on part of owner of vehicle — Order of Tribunal upheld.

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- **Section 147** — Gratuitous Passenger — Liability of insurer — Policy did not cover risk of any such passenger — Insurer ought not to have been held liable — Clear declaration by claimants themselves that said victim was gratuitous passenger in offending vehicle — Still insurer held liable — Finding so reached by Tribunal, completely perverse — No scope for Tribunal to hold so — Admittedly, award passed before Supreme Court decision in *Asha Rani's* case was pronounced — While insurer remains liable to satisfy award, its financial interest has to be protected by giving necessary directions — Direction to obtain requisite security from owner of offending vehicle before release of award amount.

#### **IV (2006) ACC 176 (Gauhati HC)**

- **Sections 147, 151** — Liability of Insurer — Insurance policy — Burden to prove that vehicle insured with named insurer — On claimants — Merely because claimant chooses to implead particular insurer as insurer of offending vehicle, it cannot be presumed that same was insured with that insurer — Claimants could not prove that offending vehicle was insured with appellant by date of accident — Tribunal erroneously held appellant liable.

#### **IV (2006) ACC 5 (Andhra Pradesh HC)**

- **Section 147(1)** — Goods vehicle — Gratuitous passenger — Liability of insurer — Claim of claimant, that accident occurred when he accompanied firewood being carried in goods Autorikshaw — No material available on record except his interested testimony — Policy not intended for purpose of passengers — Risk of gratuitous passenger not covered — Insurer not liable to indemnify owner — Claimant to realise amount from owner-cum-driver of goods autorikshaw.

#### **IV (2006) ACC 44 (Kerala HC)**

- **Section 147(1)** — Liability of Insurer — Deceased conductor in vehicle — Admittedly, insurer had covered liability for conductor — Even otherwise, as per provisions of Act, insurer liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

- **Section 147(1)** — Liability of Insurer — Deceased gratuitous passenger — Contention of claimants, deceased hired truck for taking goods and was travelling as owner of goods at relevant time — Surprisingly, no goods receipts, log book or other documentary evidence produced to show that deceased in fact had hired truck — Admittedly, at time of accident no goods were being carried — Lack of cogent evidence to prove contention — Only owner responsible to pay compensation, insurer not liable.

#### **IV (2006) ACC 131 (Himachal Pradesh HC)**

- **Section 147(1)** — Liability of Insurer — Vehicle not insured — Award amount paid by way of mistake and inadvertence — Insurer not under legal liability to pay compensation when there is no policy — No liability to pay enhanced compensation — Same to be paid by owner of offending vehicle.

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- **Section 147(1)** — Liability of insurer — Third parties — Additional premium received — Cover note shows that premium of Rs. 10 each was paid for 5 passengers — Once additional premium is accepted, insurer cannot restrict or limit its liability — Apportionment made by Tribunal directing insurer to pay Rs. 20,000 and rest of amount to be paid by owner, needs to be quashed —

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- **Section 147(1)** — Goods Vehicle — Passengers travelling therein — Insurer not liable — Liability to pay and recover — Direction regarding — Challenge against — Appeal by insurer — Contention, once insurer held not liable, no such direction could be passed against it, rejected — Insurer's entire interest safeguarded by Tribunal by entitling him to recover compensation amount from vehicle owner — Order of Tribunal upheld.

**IV (2006) ACC 292 (Rajasthan HC)**

- **Section 147 (1) [Prior to 1994 amendment]** — Goods vehicle — Liability of insurer towards non-fare paying passenger — Deceased hired lorry and was travelling therein along with sand load — Cannot be said deceased unauthorised passenger — Insurance policy or any other evidence not produced by insurer to show that there is no legal liability towards such person — Insurer cannot avoid its liability.

**IV (2006) ACC 190 (Karnataka HC)**

- **Section 149** — Liability of Insurer — No evidence that bus driver was having registration certificate, road permit etc. — Tribunal rightly absolved insurer of its liability to compensate — Liability, if any, of owner alone.

**IV (2006) ACC 294 (Uttaranchal HC) (DB)**

- **Section 149(2)** — Breach of policy — Driving licence — Validity — Liability of insurer — Validity period of driving licence of driver not been proved — Tribunal exonerated insurer — Challenge against — To avoid liability towards insured, insurer has to prove that insured was guilty of negligence and failed to exercise reasonable care while employing driver — No such evidence forthcoming — Insurer jointly and severally liable to compensate claimants.

**IV (2006) ACC 47 (Punjab & Haryana HC)**

- **Section 149(2)** — Driving Licence — Invalid — Requirement to prove negligence on part of owner while employing driver — Failure to prove — Liability of insurer — Specific statement of owner that he saw original driving licence of driver before employing driver — No evidence from insurer to establish negligence or failure to exercise reasonable care on part of insured — Burden to prove breach of policy on insurer — Failure to discharge — Insurer liable.

**IV (2006) ACC 53 (Uttaranchal HC)**

- **Section 149(2)** — Breach of Policy — Use of vehicle for purposes other than for which it was insured — Tractor — Insured for agricultural purposes — Used for carrying passengers in trolley attached to it — Clear case of violation/breach of policy conditions — Further, no extra premium paid for covering risk of passengers travelling in tractor or trolley — Insurer and insured bound by conditions prescribed in policy — Insurer not liable in case of violation of same by insured — Findings of Tribunal to contrary not sustainable, set aside.

**IV (2006) ACC 324 (Rajasthan HC)**

- **Section 149(2)** — Driving licence — Dispute as to validity — Requirement to enquire about genuineness and authenticity of licence — Stand of driver from very beginning that he held valid licence — Law does not require owner to himself go and verify same from Licensing Authority — In present case, no ground to question and doubt authenticity of licence — In absence of any such suspicion, owner cannot be held liable — Further, onus to prove that owner negligent and

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- **Sections 163A and 166** — Claim Petition — Treating of petition filed under Section 166 as that under Section 163A of Act — Justifiability — Claimants filed petition under Section 166, claiming income of deceased as more than Rs. 40,000 p.a. — During proceedings prayer made to treat petition under Section 163A by restricting income to less than Rs. 40,000 — In view of claim of claimants themselves, about income being more than said sum, Tribunal not justified in accepting prayer and treating petitions under Section 163A and awarding compensation accordingly — Impugned order set aside — Matter remanded.

#### **IV (2006) ACC 125 (Punjab & Haryana HC) (DB)**

- **Sections 163A, 166 and 140** — Code of Civil Procedure, 1908 — Order 23 Rule 1 — Claim Petition — Abandonment of part of claim — Section 163A gives right to claimants to claim income of deceased upto Rs. 40,000 p.a. — In present case, petitioners scaled down their claim of income from Rs. 4,000 p.m. to Rs. 3,300 p.m. — No prejudice caused to respondents as lesser compensation is now claimed — Application seeking amendment of claim petition seeking abandonment of part of claim allowed.

#### **IV (2006) ACC 146 (Punjab & Haryana HC)**

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#### **IV (2006) ACC 76 (Gauhati HC) (DB)**

- **Section 166** — Claim Petition — Several issues framed — Decision on one issue refused as same could not be decided as preliminary issue since it involved mixed question of facts and law — Decision of issue postponed to some later date after recording of evidence — Revision petition against — Maintainability — No party can compel Tribunal to decide issue as preliminary issue — Issue raised by insurer not pure question of law or jurisdiction — Order of Tribunal not faulted — Further, impugned order does not amount to “case decided” to hold revision petition against that order maintainable — Revision not maintainable.

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- **Section 166** — Claim Petition — Award of relief — Object and purpose of Act — Scheme under Motor Vehicles Act, social security measure — Hypertechnicalities must not come in way of granting relief.

#### **IV (2006) ACC 303 (Andhra Pradesh HC)**

- **Sections 166, 163A** — Claim Petitions — Transfer of — Allegation that claim petition under Section 166 filed at Ambala and under Section 163A at Chandigarh in respect of death of one B — 2 more claim petitions arising out of same accident pending before MACT Ambala — To avoid contradictory judgments, claim petition pending in MACT, Chandigarh, transferred to MACT, Ambala.

#### **IV (2006) ACC 57 (Punjab & Haryana HC)**

- **Section 166(2)** — Claim Petition — Territorial jurisdiction of Tribunal — Person permitted to make application to Tribunal having jurisdiction over area in which accident occurred or where claimant resides or carries on business or where defendant resides.

#### **IV (2006) ACC 76 (Gauhati HC) (DB)**

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#### **IV (2006) ACC 1 (SC)**

- **Sections 3, 4** — Death during employment — Liability to pay compensation with interest — Insurer held liable — Hence appeal — Failure to show any negative clause in policy, to extent that appellant not liable for payment of interest — Award of Commissioner directing compensation with interest upheld — No case made out for interference.

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#### **IV (2006) ACC 205 (Madras HC)**

- **Section 4A(3)(b)** — Penalty on account of compensation — Insurer's liability to pay — Contention of insurer, no liability to reimburse penalty, not accepted — Admittedly, while insuring vehicle, insurer charged additional premium to cover all liabilities incurred by insured under Act of 1923 — Having accepted such premium, insurer cannot deny its liability.

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- **Sections 8(6) and 8(7)** — Distribution of Compensation — Award payable to woman — Payment directly or through investment — Discretion of Commissioner not to pay to her amount directly but to order its investment — Expression used is 'may' — Commissioner has to decide this issue on proper application of mind — Stipulation under Sections 8(6) and 8(7) not mandatory or binding, only discretionary — Not matter of rule, in every case where woman is entitled to receive compensation, she must be denied amount due to her and must be invested or applied otherwise — Petitioner, in present case, in dire need of money — Amount in question needs to be paid directly rather than it being kept in fixed deposit.

#### **IV (2006) ACC 108 (Himachal Pradesh HC)**

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- Motor Vehicles Act, 1988 — Section 2(24) — **Workmen's Compensation Rules, 1924 — Rule 20** — Public place — Injury in accident arising out of and during course of employment — Place of accident whether public place or inside garage/workshop not at all relevant — Compensation payable.

#### **IV (2006) ACC 127 (Rajasthan HC)**

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