

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

1. FAO No.7181 of 2010(O&M)  
Date of Decision: 26.09.2012

National Insurance Co. Ltd. through its Authorized Signatory  
and Chief Regional Manager, Regional Office, SCO 332-334,  
Sector-34A, Chandigarh.

... Appellant

Versus

Mrs. Bimla Devi w/o Late Sh. Kaka Ram r/o Village Palsora  
U.T. Chandigarh and others.

... Respondents

2. FAO No.436 of 2011(O&M)

Ms. Bimla Devi W/o late Sh. Kaka Ram, aged 40 years, residing  
at Village Palsora, UT, Chandigarh and others.

... Appellants

Versus

M/s JK Lakshmi Cement Ltd., Nehru House 4, Bhadurshah  
Zafar Marg, New Delhi and another.

... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

Present: Mr. Ashwani Talwar, Advocate,  
for the appellant in FAO-7181-2010; and  
for respondent 2 in FAO-436-2011.

Ms. Ekta Thakur, Advocate,  
for the appellants in FAO-436-2011; and  
for respondents 1 to 6 in FAO-7181-2010.

Mr. Navin Chaudhary, Advocate,  
for respondent 7 in FAO-7181-2010; and  
for respondent 1 in FAO-436-2010.

\*\*\*\*\*

1. Whether reporters of local papers may be allowed to  
see the judgment? YES
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the  
digest? YES

**K. KANNAN, J. (Oral)**

1. The appeal by the insurance company is on the extent of liability and the cross appeal by the claimants is for enhancement. The death is seen to have resulted by the driver of a truck coming in contact with live wire of a Mixer attached to a Tata truck which he was driving. The Tribunal had awarded compensation in a petition filed under Section 163-A of Motor Vehicles Act on a finding that the death had resulted by the user of the vehicle and, therefore, there was a liability on the part of the insurance company for the risk cover of the insured.

2. The learned counsel appearing on behalf of the insurance company would contend that the extent of liability could be only to the scale of compensation admissible under the Workmen's Compensation Act and the compensation determined under Section 163-A of the MV Act was not, therefore, tenable. According to him, the death was on account of his own fault and, therefore, the scale of liability could if at all be attached only in the manner prescribed under the Workmen's Compensation Act. The learned counsel appearing on behalf of the claimants would point out that the death resulted by the user of motor vehicle in the course of his employment and the death was on account of Mixer which was

attached to the truck coming in contact with high power electricity wire. There was no negligence on the part of the deceased and if it all any negligence could be seen it was of the Electricity Board for not properly maintaining an over-hanging high power electricity wire. The resort to either the forum under the Workmen's Compensation Act or under the Motor Vehicles Act is possible by virtue of Section 167 of the MV Act. A compulsion to claim under the Workmen's Compensation Act would arise to make a claim even if death was on account of his own negligence in any case under MV Act. However, for a successful claim under the Motor Vehicles Act if he has not himself been negligent or if had not been a tortfeasor, all that would be necessary to be done in a situation of claim by a workman's representative is to show that the accident took place in the course of employment and the death or injury was by the user of the motor vehicle. If both these conditions are attracted then, at the option of the workman or his representative, the claim could be prosecuted under the MV Act and the scale of compensation as provided under the MV Act alone would only. I would find in this case that no negligence could be attributed to the workman and the liability of the insurer shall be to the scale of compensation provided under the MV Act.

3. The contention of the cross-objector in the appeal is

that the Motor Accident Claims Tribunal in a petition filed under Section 163-A of the MV Act are bound to apply the formula as prescribed under the Act and in the choice of multiplier, the Tribunal ought to have applied 15 for a person who was aged 45 years and the choice made at 13 is erroneous. I would accede to the contention and re-calculate the amount to result in ₹3,60,000/-. There shall be an additional amount of ₹9,600/- for the conventional heads of claim. The total compensation payable will be ₹3,69,600/-. The additional amount would also attract interest @ 7.5% per annum from the date of petition till the date of payment.

4. The award stands modified and the cross appeal filed by the claimants is allowed to the above extent.

5. The appeal filed by the insurance company is dismissed.

26<sup>th</sup> September, 2012  
*Rajan*

( **K. KANNAN** )  
**JUDGE**