

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No.11354 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.G.SHAH** **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

HEIR OF DECD.DEVRAJBHAI NATHABHAI BHUVA - GEETABEN**DEVRAJBHA & 2....Petitioner(s)****Versus****DRIVER - AUMPRAKASH RAMSURAT CHAUHAN-TRUCK NO:MH-06-9013'S****& 3....Respondent(s)****Appearance:**

MR TUSHAR L SHETH, ADVOCATE for the Petitioner(s) No. 1 - 3

DELETED for the Respondent(s) No. 1 - 3

MR PALAK H THAKKAR, ADVOCATE for the Respondent(s) No. 4

CORAM: HONOURABLE MR.JUSTICE S.G.SHAH**Date : 23/12/2015****CAV JUDGMENT**

1. Heard Mr. Tushar L. Sheth, learned advocate for the Petitioners and Mr. Palak H. Thakkar, learned advocate for the Respondent No.4 at length. Perused the record.
2. Both the parties have agreed to dispose of this petition at such admission stage, hence Rule. Mr. Palak H. Thakkar, learned advocate waives service for Respondent No.4. Respondent Nos.1 to 3 are deleted by the Petitioner since they are driver and owner of the vehicle in question, whereas, only a contesting party is Respondent No.4 – Insurance Company.
3. The Petitioners herein are original Claimants, whereas, Respondents are original defendants in Motor Accidents Claims Petition No. 69 of 2005 before the Motor Accidents Claims Tribunal (Aux.) at Gondal. The parties are referred in their original capacity in such petition.
4. Claimant have filed claim petition claiming compensation of Rs.10,00,000/- because of accidental death of one Devrajbhai Nathabhai Bhuva, since Claimants are widow and minor children of such victim. So far as nature of

incident is concerned, it is stated in the claim petition that on the fateful date of incident i.e. 3.5.2004, when victim was going towards Virpur from Gondal for some social work because of marriage in the family, at about 11.00 p.m., the offending truck came in full speed on wrong side and hit the jeep of the Petitioner which resulted into grievous injuries to the victim for which he was ultimately succumbed to death. It is further contended in the claim petition that the victim was serving as a technician with Bhilvad Compressor Repairing and was getting Rs.2,500/- per month as a salary and he was also earning Rs.50,000/- per annum from agricultural activity. Thereby total yearly income of the victim was claimed as Rs.80,000/- and based upon such calculation, an amount of Rs.10,00,000/- is claimed.

5. The title of such claim petition discloses that such claim is preferred under Section 166 of the M.V. Act. Section 166 of the M.V. Act is a general provision of law with a heading "*Application for Compensation*" and provides that an application for compensation arising out of an accident of the nature specified in Sub Section (1) of Section 165 may be made by different persons which are

listed in sub-clause (a) to (d). The entire reading of Section 166 which is reproduced hereunder, nowhere, specify any restriction in any manner except a proviso to sub section (2) which states that there shall be a separate statement immediately before the signature of the applicant, if claim for compensation under Section 140 is made in such application. Whereas, sub section (1) of Section 165 provides that the State Government may constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

6. For the purpose, explanation of sub section (1) of Section 165 is much material and, therefore, Sections 165 and 166 of M.V. Act are reproduced hereunder;

"165. Claims Tribunals. -

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this

Chapter referred to as Claim Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation. — For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140 98 [and section 163-A].

(2) *A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.*

(3) *A person shall not be qualified for appointment as a member of a Claims Tribunal unless he —*

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge 99 [or as a District Judge.]

(4) *Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."*

"166. Application for compensation. – (1)

An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made –

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as Respondents to the application.

1[(2) Every application under sub - section (1) shall be made, at the option of the Claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the Claimant resides, or carries on business or within the local limits of whose jurisdiction the defendant resides and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]"

Such explanation makes it clear that the expression "Claims for compensation" in respect of accidents involving death of or bodily injury to persons arising out of use of motor vehicles" includes claims for compensation under Section 140 and Section 163(A). Now, for ready reference, it would be necessary to refer bare provisions of both the Sections, which reads as under: -

"140. Liability to pay compensation in certain cases on the principle of no fault. -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of 85[fifty thousand rupees] and the amount of compensation payable under that subsection in respect of the permanent disablement of any person shall be a fixed sum of 86[twenty – five thousand rupees].

(3) In any claim for compensation under sub-section (1), the Claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

3(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for

the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163 — A."

"163 — A. Special provisions as to payment of compensation on structured formula basis. — (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. — For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the Claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by

notification in the Official Gazette, from time to time amend the Second Schedule.]"

Therefore, bare reading of both the Sections make it clear that practically Section 166 is a procedural provision that who will file an application and how it is to be filed and before which Tribunal, whereas, right to claim compensation is confirmed under sub Section (1) of Section 165 which states that compensation can be claimed in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

7. In such enabling provision, the right to claim compensation accrues out of use of motor vehicle and, there is no other requirement in any manner whatsoever including role of the victim or earning activities and income of the victim. In other words, there is no limitation to file an application for compensation under M.V. Act based upon the nature of accident, role of the victim, or earning activities and actual income of the victim. At the most all such criteria may be relevant only for considering

quantum of the compensation that may be awarded and not for confirming the right to claim compensation if injury or death has resulted in respect of accident arising out of the use of the motor vehicle.

8. Therefore, what is material to entertain a claim petition under the Act by the Tribunal is vehicular accident and injury or damage to some one. Unfortunately, the Tribunal and Insurance Company has failed to appreciate the wider power of the Tribunal confirmed under the Act in form of Sub Section (4) of Section 166 which confirms that the claim Tribunal shall treat any report of accidents forwarded to it under sub section (6) of Section 158 as an application for compensation under this Act. If such report is to be treated as an application for compensation even without a formal application filed or preferred by the persons listed in sub section (1) of Section 166, then, it is quite clear and obvious that there is no reason or limitation that whether such application is filed under Sections 140, 163(A) or 166 of M.V. Act. If it so, I fail to realize that why and how an Insurance Company is permitted to drag such matters for long period like decade as it is done in the

present case and then to claim that they are dealing with the public money and, therefore, there should not be an award of compensation in favour of the Claimants on all such technical ground or that Claimants may not be entitled to interest for all such period if at all they are entitled to compensation, if any.

9. Therefore, though at present, there is no such issue raised by any of the litigant, I have no option but to observe that such practice and activities of the Insurance Company are required to be dealt with strictly and to ask them by the Tribunal to deposit the minimum amount of compensation may be as provided under Section 140 or even under Section 163(A), immediately on receipt of a report under Section 158(6) or when claim petition is preferred by the concerned Claimants and then not to pay the interest of such amount to the Claimants / victims. As there is a reference of sub section (6) of Section 158, it would be appropriate to recollect such provision also since by virtue of such Section i.e. 158(6) of the Act, the legislature tried to reduce the period of pendency of claim cases and speed up the process of determination of compensation by

making it mandatory for registration of a claim within 1 month of receipt of first information of accident without waiting for the Claimants to file a claim petition. That is the view taken by Hon'ble Supreme Court in the case of Jai Prakash v. National Insurance Co. Ltd. reported in 2010(2) SCC 607. Sub Section (6) of Section 158 of M.V. Act reads, as under: -

“(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer].”

10. At present, we are concerned with the impugned order below an application at Exh.41 in such claim petition before the Tribunal by the Claimants whereby Claimants have prayed the Tribunal to permit them to amend the claim petition contending that since they

don't have any cogent evidence to prove the income of the victim as Rs.80,000/-, they may be permitted to amend the petition by disclosing the yearly income as Rs.40,000/- instead of Rs.80,000/- so as to enable them to proceed further under Section 163(A) of the Act and, thereby also to amend the cause-title disclosing that now application is to be treated under Section 163(A).

11. With due respect to the entire system, this is a simple application for amendment of the pleading and that too based upon a misconception both, by the Tribunal, so also by the Respondent – Insurance Company that once claim petition is preferred under Section 166, now Claimants cannot claim compensation under Section 163(A) even by restricting their claim for limited income of Rs.40,000/-, even though, it is claimed that they have disclosed the income of the victim as Rs.80,000/- per annum, they don't have cogent evidence to prove it.
12. Practically, this is a simple application for amendment of the pleading for which provision of Order 6 Rule 17 of the Code of Civil Procedure would apply which does not restrict the litigant to amend the factual dispute

except which changes the nature of limitation. Considering the discussion hereinabove, reducing the income would not change the nature of incident. Even if there is a request to consider the application under Section 163(A), it would not change the nature of petition, inasmuch as, application for compensation of any Section is to be preferred under Section 166 of the M.V. Act and, therefore, there is no limitation in any manner whatsoever, when Petitioner has simply disclosed that his application may be considered under Section 163(A) of the Act. For the purpose, reference of Section 163(A) and 163(B) is also material, which are reproduced hereunder: -

"163 – A. Special provisions as to payment of compensation on structured formula basis. –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of

this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the Claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

"163-B. Option to file claim in certain cases. — Where a person is entitled to claim compensation under section 140 and section 163-A, he shall file the claim under either of the said sections and not under both."

The bare perusal of both these Sections makes it clear that Section 163(A) provides for special provisions as to payment of compensation on structured formula basis confirming that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arisen out of use of motor vehicle, compensation, as indicated in the Second Schedule, to the

legal heirs or the victim, as the case may be. Whereas, Section 163(B) provides for option to file a claim in certain cases providing that where a person is entitled to claim compensation under Section 140 and Section 163(A), he shall file the claim under either of the said sections and not under both. It seems that this provision has been wrongly considered and interpreted both, by the Tribunal and by the Insurance Company when they considered that the Claimant has an option to file an application either under Section 163(A) or under Section 166.

13. The provision of Section 163(B) is quite clear and obvious, since Section 140 provides for interim compensation to be paid immediately after the incident and at the earliest but the amount is minimum and fixed under the Section i.e. Rs.50,000/- in case of death and Rs.25,000/- in case of permanent disablement. The proviso to sub Section (5) of Section 140 is also material to recollect here which states that the amount of such compensation to be given under other law shall be reduced from the amount of compensation payable under these Sections i.e. Section 140 or under Section 163(A).

"140. Liability to pay compensation in

certain cases on the principle of no fault. –

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A."

This proviso makes it quite clear and obvious that there may be an award of additional compensation in addition to the compensation paid either under Section 140 or under Section 163(A) with only restriction that in such situation, amount already awarded under either of such Sections, is to be reduced from the total amount to be awarded under any other provision. Therefore, provision of Section 163(A) is not alternative or equal to Section 166 but it is alternative or equal to the provisions of Section 140. Therefore, there is manifest error by the Tribunal in passing impugned order below Exh.41, whereby, Tribunal has rejected the request of claim to amend the claim petition and, thereby,

refused to award any compensation under Section 163(A).

14. However, it seems that the dispute is arising because of the factual details, inasmuch as, when two vehicles are involved in the accident, one driven by the victim and one offending vehicle, till date when Claimant or owner of the offending truck No.MH-06-9013 are not in a position to claim that whether such truck was insured or not and, thereby, ultimately, responsibility to pay compensation to the victim would raise upon the owner and insurer of jeep driven by the victim, insurer of the jeep have resisted the application at Exh.41, so also present petition contending that if victim is involved in an accident as a driver and if he is negligent, then, now, he cannot change his claim under general provisions as provided under Sections 165 and 166, to a claim under Section 163(A), wherein, negligence of the victim is not be counted and, therefore, if at all victim was negligent in the accident, the amendment would certainly change the nature of the petition wherein now Claimants would be entitled to compensation even if victim is negligent. It is suffice to say that practically Claimants does not have to

disclose that either they are claiming under Section 166 or under Section 163(A). But whether they are claiming under Section 140 or not and as per provision of Section 163(B), they cannot claim compensation both, under Section 140 and under Section 163(A) but they can certainly claim compensation under Section 163(A) irrespective of disclosure of Section 166 in the claim petition so also even if the total yearly income of the victim is Rs.80,000/-.

15. In that case, though Tribunal is empowered to award compensation under Section 163(A), at the most while deciding the application finally Tribunal has to reduce the amount already awarded under Section 163(A). Though, it has been considered throughout this 3 decades that compensation under Section 163(A) is payable only if annual income is upto Rs.40,000/-, practically, statute nowhere confirm such restriction and, therefore, even if Petitioners are claiming income of the victim as Rs.80,000/- or even Rs.40,000/-, ultimately, Tribunal has to consider the available evidence for deciding the annual income of the victim for determination of final amount of compensation that may be payable even under Section

163(A). Therefore, even if Claimants have pleaded that victim was earning Rs.80,000/- p.a., practically, if there is a specific and positive evidence of such income, in my view, initially, instead of claiming Rs.50,000/- under Section 140, Claimant can certainly claim suitable compensation under Section 163(A) on structured formula and continue his claim petition under Section 166 to prove his income and negligence of other side to get full amount of compensation. If Claimants succeed in such attempt, they may be entitled to full compensation less compensation awarded under Section 163(A) or they have to satisfy themselves by the award under Section 163(A), if at all it is proved that victim is also negligent.

16. Though Insurance Company may not digest such situation, in-fact, in the present case, the scenario is altogether a different, inasmuch as, the provision of the Act which are referred hereinabove specifically makes it clear that compensation is payable for death or bodily injury arising out of the use of motor vehicle, irrespective of negligence and income of the victim and liability of all the opponents would be joint and several and, therefore, when responsibility is arisen out

of the use of motor vehicle, even Insurance Company of the vehicle driven by the victim is liable to pay the full set of compensation to the legal heirs and ultimately, if they want to get reimbursement of their share from the other Insurance Company or owner of the other vehicle, practically, it is their responsibility to prove that victim was not negligent and that driver of other vehicle was solely negligent. Unfortunately, in the present case, when details of insurance of offending truck is not available, now when owner and Insurance Company of the vehicle which was driven by the victim has to pay the compensation, entire episode of such amendment application has arisen.

17. It seems that present controversy has been arisen because of language of sub section (2) of Section 163(A) which provides that the Claimant shall not be required to plead or establish that death was due to any wrongful act or negligent of default of the owner of the vehicle or vehicles concerned or of any other person. However, when explanation to sub section (1) of Section 165 confirms that such application includes claims for compensation both under Section 140 and under Section 163(A), practically, there is no

difference in disclosing of the Section in cause-title. Moreover, practically, such disclosure and amendment is purely technical and it does not change the nature of the petition and, therefore, there is no reason to refuse such amendment.

18. If at all, Insurance Company is of the opinion that they are not liable or that their interpretation is different than what is decided in the present case, then, in that case, it would be appropriate for the Insurance Company to convey such situation to the Insurance Regulatory Development Authority (For Short 'IRDA') in proper manner. In such situation, Insurance Company may convey IRDA to enhance the premium so as to cover all types of risk and liability for the victim of the road accident considering the fact that basic principle of the provisions of Motor Vehicle Act is to compensate all Claimants in case of damages and injuries suffered by them out of use of the motor vehicle. Therefore, though Courts' have considered the necessity to prove the negligence of driver, practically, it is for fixing liability between different tortfeasors, but the basic principle of the compensation is to see that every victim

and / or Claimants shall get appropriate compensation considering the fact that they are not responsible for such injuries, but it was because of the use of the motor vehicle in accident. It would not be inappropriate to recollect here the position which is emerging till 17.3.1978, whereby, Insurance Companies were not considering themselves responsible and liable for indemnifying the owner in case of injuries or death of an occupant of a car in a private vehicle, if Insurance Policy is only for third party. Such situation is well described in a reported judgment between Harshvardhatiya Rudraditya v. Jyotindra Chimanlal Parikh, reported in 1981 GLR 555, wherein, paragraph Nos.10 and 11 are relevant which makes it clear that after the decision by the Hon'ble Supreme Court contrary to the above basic principle of the law of compensation under the Motor Vehicle Act, the Tariff Advisory Committee has to issue one Circular being M.V. No.1/1978 on 17.3.1978 confirming that all the existing policies may be deemed to be incorporated the proposed amendment automatically, whereby, concept confirmed by the Hon'ble Supreme Court in the case of Pushpabai Parshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd., reported in

AIR 1977 SC 1735 has been modified by such amendment so as to include the liability of Insurance Company even in cases of occupants of the private vehicle. By such Circular, following words are considered automatically amended in all existing policies w.e.f. 25.3.1977 i.e. retrospectively considering the fact that judgment of the Hon'ble Supreme Court is of 25.3.1977.

"In order to make this intention clear, Insurers are requested to amend clause 1(a) of section II of the Standard Private Car Policy by incorporating the following words after the words "death of or bodily injury to any person" appearing therein: including occupants carried in the motor car provided that such occupants are not carried for hire or reward." I am accordingly to request Insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant sheet."

19. If we peruse the impugned order, it transpires that the Tribunal has relied upon the decision between New India Assurance Co. Ltd. v. Devraj Haribhai Gadhvi, reported in 2008(3) GLH 101. If we peruse such judgment, it becomes clear that it is a decision by the learned Single Judge of this High Court and, therefore, when there are decision by the

Hon'ble Supreme Court on similar issue, I do not see any substance to blindly rely upon such decision. It seems that in such decision by the learned Single Judge of this High Court, it is held that if the Claimant is earning more than Rs.40,000/- in a year, then, he is not permitted to amend the petition so as to enable him to claim compensation under Section 163(A). On the contrary, if we peruse the entire judgment, in-fact, what is held by the learned Single Judge is altogether against the Insurance Company when Paragraph No.8, reads as under:-

"In view of above observations made by learned Single Judge of this Court and Delhi High Court and Division Bench of this Court as referred above, a Claimant is entitled to reduce his claim while reducing the salary for taking the benefit under Section 163(A) of the Motor Vehicles Act."

20. Therefore, it is quite clear and obvious that the Tribunal has misinterpreted the decision while rejecting the application at Exh.41. Since, in such reported case, previous decisions are already discussed, I do not wish to discuss all the issues in detail except to refer them here by listing such relevant cases as under: -

[a] **New India Assurance Co. Ltd. v. Nagjibhai Damjibhai Gadesara,**
reported in 2008(1) GLR 225

[b] **Prem Devi v. Jagdish Kumar**
decided on 2.7.2012 in FAO No.398 of
2000 by Delhi High Court.

[c] **New India Assurance Co. Ltd. v. Madhuben Chandubhai Solanki,** reported
in 2011 JX(Guj) 1459.

21. In view of above settled legal position, I do not see any reason or substance in the decision referred by the Insurance Company viz; [a] **Himachal Road Transport Corporation v. Baldev Kumar Nayyer**, reported in 2007 ACJ 678 and [b] **United India Insurance Co. Ltd. v. Anitha**, reported in 2007 ACJ 251, whereas, **decision in the case of Oriental Insurance Co. Ltd. v. Meena Variyal**, reported in 2007 AIR SCW 2279 is necessary to answer the reference of the decision in the case of **Oriental Insurance Co. Ltd. v. Dhanbai Kanji Gadhvi**, reported in 2011 (11) SCC 513 that mere going by some decision or other, without appreciating facts in a given case, in light of law, if any, declared by Hon'ble Supreme Court, the Court or Tribunal should not lead to a correct conclusion in a normal course,

though in such reported case, liability of Insurance Company has been exonerated.

22. In view of above facts and circumstances, the impugned order certainly results into injustice to the Claimants and by all means, it is against the settled legal principle applicable to such cases and, therefore, it needs to be quashed and set aside. Therefore, the impugned order is quashed and set aside. Thereby, application at Exh.41 is allowed, as prayed for. Therefore, the petition is also allowed, as prayed for. Under the above circumstances, matter is to be decided by the Tribunal in accordance with law. Rule is made absolute to the aforesaid extent.

Sd/-
(S.G.SHAH, J.)

* VATSAL