

STATE OF UTTAR PRADESH THROUGH
PRINCIPAL SECRETARY & ORS.

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v.

ALL U.P. CONSUMER PROTECTION BAR ASSOCIATION

(Civil Appeal No. 2740 of 2007)

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MAY 18, 2018

**[DIPAK MISRA, CJI, DR. D.Y. CHANDRACHUD
AND INDU MALHOTRA, JJ.]**

Consumer Protection Act, 1986:

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ss.10(3), 16(2) and 30 – Paucity of Infrastructure in the Consumer Fora – As per direction of Supreme Court, Union of India framed Model Rules prescribing objective norms for implementing provisions of ss. 10(1)(b), 16(1)(b) and 20(1)(b) with regard to appointment of members respectively of District Fora, State Commissions and National Commission – State Governments agreed to adopt the Model Rules by framing appropriate rules in exercise of the rule making power u/s. 30 – Direction to State Governments to frame appropriate rules in exercise of rule-making power u/s. 30 in accordance with final Draft Model Rules – Directions to Union of India to consider requirement of National Commission for sanctioning additional posts and to consider request of National Commission to make additional space available – Status report regarding draft Consumer Protection (Amendment) Rules, 1987 (which have been referred to the Ministry of Finance for its concurrence) to be apprised to this Court and also compliance of other direction to be apprised to the Court – Matters adjourned – Consumer Protection Rules, 1987 – r.11.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2740 of 2007.

From the Judgment and Order dated 08.10.1998 of the High Court of Judicature at Allahabad in CMWP No.968/1997

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Writ Petition(Civil) No.164/2002.

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- A Maninder Singh, ASG (NP), P.S. Patwalia, Sr. Adv., Meru Sagar Samantray, K. Luikang Michael, Ankur Prakash, Tushar Bakshi, Ranjan Mukherjee, Daniel Stone Lyngdoh, K.V. Kharlyngdoh, V.N. Raghupathy, R. Balasubramanian, Wasim A. Quadri, Prabhas Bajaj, Akshay Amritanshu, Ms. Aarti Sharma, Ms. Niranjana Singh, Shekhar Vyas, Arun Pathak, M.K. Maroria, Raj Bahadur, Rachana Srivastava,
- B A.K. Sharma, Krishnanand Pandeya, Ms. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, Leishangthem Roshmani Kh., Ms. Maibam Babina, Sibo Sankar Mishra, Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Vishakha, Ms. Shodhika Sharma, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Ms. Simran Jeet, M/s Arputham
- C Aruna and Co., Ms Prachi Mishra, Arjun Garg, Chaitanya, Suneet Padhi, Atul Jha, Sandeep Jha, Rajesh Srivastava, Gopal Singh, Kumar Milind, Manish Kumar, T. N. Rama Rao, Hitesh Kumar Sharma, T. Veera Reddy, T.V. George, K.N. Madhuroodhanan, R. Sathish, Shuvodeep Roy, Sayooj Mohandas M., Rituraj Biswas, S. S. Shamsbery, Amit Sharma, Sandeep Singh, Ankit Raj, Ms. Indira Bhakar, Milind Kumar, V. G. Pragasam,
- D S. Prabu Ramasubramanian, S. Manuraj, Ms. Ranjeeta Rohtagi, Mrs. D. Bharathi Reddy, Ms. C.K. Sucharita, S. Srinivasan, M/s Corporate Law Group, Anil Shrivastav, G. Prakash, B.S. Banthia, Ms. Sumita Hazarika, R. Gopalakrishnan, Radha Shyam Jena, Kuldeep Singh, Tara Chandra Sharma, Jatinder Kumar Bhatia, Ms. A. Subhashini,
- E Ms. Kamini Jaiswal, Mrs. Anil Katiyar, M/s V. Maheshwari & Co., B. Balaji, Ashok K. Srivastava, Ashok Mathur, Rajeew Sharma, K.R. Sasiprabhu, Mrs. Revathy Raghavan, Ms. Kaveeta Wadia, T. Mahipal, T. V. Ratnam, Advs for the appearing parties.

The Judgment of the Court was delivered by

- F **INDU MALHOTRA, J.** 1. The issue which arises for consideration in the present civil appeal and writ petition pertains to the paucity of infrastructure in the Consumer Fora all over the country.
2. This Court vide order dated 14th January, 2016 constituted a three-member committee presided over by Justice Arijit Pasayat
- G [Retired] to examine various aspects as enumerated in the Order. The said committee was requested to forward its deliberations to the various State Governments.
3. By Order dated 21st November, 2016 this Court issued directions to the Union Government to frame Model Rules for the purpose of
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ensuring uniformity by the State Governments in the exercise of the rule-making power under Sections 10(3) and 16(2) of the Consumer Protection Act, 1986. The directions issued by this Court are reproduced hereunder: A

“(i) The Union Government shall for the purpose of ensuring Uniformity in the exercise of the rule making power under Section 10(3) and Section 16(2) of the Consumer Protection Act, 1986 frame model rules for adoption by the State Governments. The model rules shall be framed within four months and shall be submitted to this Court for its approval; B

(ii) The Union Government shall also frame within four months model rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District fora, State Commissions and National Commission; C

(iii) The Union government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions mentioned above. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of the consumer fora commensurate with the nature of adjudicatory duties and the need to attract suitable talent to the adjudicating bodies. These rules shall be finalized upon due consultation with the President of the National Consumer Disputes Redressal Commission, within the period stipulated above; D
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(iv) Upon the approval of the model rules by this Court, the State governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule making powers under Section 30 of the Consumer Protection Act, 1986.

(v) The National Consumer Disputes Redressal Commission is requested to formulate regulations under Section 30A with the previous approval of the Central Government within a period of three months from today in order to effectuate the power of administrative control vested in the National Commission over G

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- A the State Commissions under Section 24(B)(1)(iii) and in respect of the administrative control of the State Commissions over the District fora in terms of Section 24(B)(2) as explained in this Judgment to effectively implement the objects and purposes of the Consumer Protection Act, 1986.”
- B 4. On 4th March, 2017, the three-member committee submitted a detailed report to the Court.
5. The Union of India framed draft rules and regulations which were placed for consideration before this Court. During the course of hearing on 07th March, 2017 a need for certain modifications to the
- C Model Rules was expressed by the learned Counsel representing various parties.
6. The Union of India filed an affidavit on 22nd March, 2017 wherein the Final Draft Model Rules were framed and annexed as Annexure-II.
- D 7. In compliance with the directions issued by this Court on 21 November 2016 and 15 December 2017, an affidavit has been filed by the Union of India in April 2018. Paragraphs 9 and 10 of the affidavit are extracted below :
- E “9. It is respectfully submitted that there are two possible ways at this juncture of the Central Government in this behalf. One method is that the Rules, which have been framed by the Central Government (in compliance with Direction 18(iv) of the judgment dated 21.11.16 that this Court would approve the rules) and which have been filed alongwith the earlier affidavit dated 22.3.17, will
- F be adopted by the State Governments by framing appropriate rules in exercise of the rule making power under Section 30 of the Consumer Protection Act 1986 upon approval by this Court.
10. That the other method would be that the Central Government, with the approval of this Court awaits the completion of the legislative exercise regarding the proposed consumer bill pending before the
- G Parliament and upon its completion, frames the rules and notifies the same, which would automatically be applicable for all State Commissions and District Forums under the Consumer Protection Laws. The Government is open and willing to adopt any of the above mentioned two methods which may be approved by this Court.”
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During the course of the hearing on 27 April 2018, a consensus has emerged that the course suggested in paragraph 9 of the above affidavit should be accepted. Counsel for the Union of India has no objection since it is in line with the suggestion contained in paragraph 9. The State Governments shall complete the exercise within a period of three months. The Registrar (Judicial) is directed to forward a copy of this order to the Chief Secretaries of all the States/Union Territories for ensuring compliance.

Infrastructure : National Consumer Disputes Redressal Commission:

(i) **Posts** : Out of 204 additional posts required to be created according to the norms recommended by the Staff Inspection Unit, 51 posts have been created leaving a balance of 153 posts.

We request the Union of India to consider the requirement of the NCDRC for sanctioning additional posts in the right perspective so that the efficacy of its work is enhanced. This Court shall be apprised on the next date of hearing of the action taken by the Union government in that regard;

(ii) **Space**: The affidavit filed on behalf of the NCDRC indicates the dire necessity of procuring additional space. The filing of cases has gone up by nearly 300 per cent, be it consumer complaints, first appeals or revision petitions. This Court has been apprised of the fact that there is no space available for storing the files of fresh cases, which are lying in the corridors. The record room of NCDRC is packed to its capacity. An apprehension has been expressed that unless the Union Government intervenes in the matter on a pro-active basis, a stage will be reached where due to space constraints, it will not be possible to trace out files of cases to be heard by the Benches. Further, due to the increased filing, there is a need to constitute additional Benches. In the existing infrastructure, there is little space for Court halls, Chambers and for the supporting staff. NCDRC has addressed communications on 20 January 2018 and 5 April 2018 to the Secretary, Ministry of Consumer Affairs, Government of India placing a request for the allotment of additional space to the extent of 37,249 sq. ft. We are sure that the Union of India will respond to the request of the NCDRC in the right perspective and will make additional space available. The dearth of space is seriously hampering the functioning of the NCDRC. We commend to the Secretary

A in the Ministry of Consumer Affairs the urgent necessity of taking steps, in that regard. We expect that this Court would be apprised of the decision of the Union government by the next date of hearing;

(iii) Salaries, honorarium and other allowances of the President and Members of the NCDRC:

B NCDRC has proposed an amendment to Rule 11 of the Consumer Protection Rules 1987. The Court has been apprised, in the affidavit dated 22 March 2017, that in compliance with the order dated 21 November 2016, draft Consumer Protection (Amendment) Rules 1987 have been prepared in consultation with the NCDRC and have been referred to the Ministry of Finance for its concurrence.

C This Court shall be apprised of the status of the matter by the next date of hearing. A status report indicating compliance with the above directions shall be filed by the next date of hearing.

D 8. On 27th April, 2018 this Court heard all the parties, including the Counsel appearing for all the States. The said Model Rules were accepted by the Counsel representing all the parties before the Court. Therefore, it is directed that the State Governments shall frame appropriate rules in exercise of the rule-making power under Section 30 of the Consumer protection Act, 1986 in accordance with the Final Draft Model Rules submitted by the Union of India.

E 9. List on 28 August 2018.

MOHAR SAI AND ANR.

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v.

GAYATRI DEVI AND ORS.

(Civil Appeal No. 8411 of 2015)

APRIL 27, 2018

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[DIPAK MISRA, CJI AND A.M. KHANWILKAR, J.]

Motor Vehicles Act, 1988 – s.140 – When not applicable – Person died in a motor accident – Claim petition by respondents-heirs of the deceased – Tribunal decided the petition in favour of the respondents holding that the motorcycle at the relevant time was being driven by appellant No.2 and he had caused the accident due to rash and negligent driving and granted compensation – High Court reversed the said finding recorded by Tribunal, however, maintained the liability fastened on appellants as regards the compensation – Plea of appellants that in view of finding of High Court that it was a case of contributory negligence as the deceased himself was driving the motorcycle, at the most respondents would be entitled to compensation on ‘no fault liability principle’ u/s.140 – Held: High Court committed manifest error in reversing the finding recorded by the Tribunal – Respondents through their witnesses established that the motorcycle was owned by appellant No.1 (father of appellant No.2) and on the day when the accident took place the motorcycle was driven by appellant no.2 while the deceased was sitting in the middle and DW-2 was behind him – High Court did not discard the said version as untruthful, however, selectively relied on the statements of interested witnesses examined on behalf of the appellants – No infirmity in the finding recorded by the Tribunal – Once the finding of High Court that the motorcycle was, in fact, driven by deceased becomes doubtful, the question of applying s.140 of the Act does not arise – In the facts and circumstances of the present case, no interference is warranted – Constitution of India – Art.136.

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Motor Vehicles Act, 1988 – Motor accident claim under – Role of Court – Discussed.

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A **Dismissing the appeal, the Court**

HELD : 1.1 In cases where the accident occurs without any fault of the owner of the vehicle or the fault of the other vehicle, the liability to pay compensation, at best, must be determined in terms of Section 140 of the Motor Vehicles Act, 1988. The High Court in the present case overturned the finding recorded by the Tribunal that the motorcycle was driven by appellant No.2 at the relevant time when the accident occurred and, instead, concluded that the motorcycle was, in fact, driven by deceased. In that sense, the accident occurred neither due to the fault of the owner of the vehicle (appellant No.1) who, admittedly, was not present or travelling on the motorcycle at the relevant time nor due to the fault of any other vehicle. However, on a deeper scrutiny it is found that the High Court committed manifest error, an error apparent on the face of the record, in reversing the finding recorded by the Tribunal that the motorcycle was being driven by appellant No.2 (son of appellant No.1 – owner of the motorcycle) and had caused accident due to rash and negligent driving. Though, the respondents–claimants have neither come up in cross appeal against the reduction of the compensation amount on the finding of contributory negligence nor have they filed any cross objection regarding reversing of the crucial finding of fact by the High Court. However, it is well settled that in motor accident claim cases, the Court cannot adopt a hyper-technical approach but has to discharge the role of *parens patriae*. [Para 8][515-C-G]

1.2 The respondents, through their witnesses established that the motorcycle was owned by appellant No.1 and appellant No.2 used to drive that motorcycle himself. The appellants did not even produce any title of evidence, except the bare words of the appellants and their witnesses (DW-2) and (DW-3) who were obviously interested witnesses. The view taken by the Tribunal was not only a possible view but also in conformity with the scale to be applied for appreciation of evidence in motor accident cases namely preponderance of probabilities. [Paras 9, 11][516-E-F; 518-D]

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1.3 The entirety of evidence was not analysed by the High Court, including the material evidence of witnesses who had seen appellant No.2 driving the motorcycle and deceased sitting behind him as pillion rider. The High Court, however, selectively relied on the statements of interested witnesses examined on behalf of the appellants. The eye witnesses examined by the claimants were neither discarded as untruthful nor did the High Court find any contradiction in the version given by them. Their version remained unshaken during the cross-examination. As such, the High Court committed manifest error in reversing the finding of fact recorded by the Tribunal by solely relying on the version of interested witnesses examined by the appellants in defence. On the other hand, the analysis of the totality of evidence by the Tribunal is consistent with the principle of preponderance of probabilities. [Para 12][519-C, E, G-H; 520-A]

1.4 Once this finding of the High Court becomes doubtful, the principal argument of the appellants fails, in which case the question of applying Section 140 of the Act does not arise. There is no infirmity in the finding recorded by the Tribunal that the motorcycle was driven by appellant No.2 at the relevant time and had caused the accident due to rash and negligent driving resulting in injuries to all the three persons travelling on the motorcycle, including the deceased who succumbed to the injuries before being admitted in the Hospital. No serious argument was made about the quantum of compensation determined by the High Court providing for future prospects and deducting 1/4th towards personal expenses, including applying the multiplier of 16. Even if any argument in that behalf was available to the appellants, as the amount involved is insignificant and the difference between the quantum determined by the Tribunal and the quantum determined by the High Court is only marginal (the Tribunal determined Rs.3,85,000/- and the High Court determined Rs.3,86,500/-), interference in exercise of jurisdiction under Article 136 of the Constitution is declined. At the same time, it is clarified that the justness of the finding of the High Court regarding contributory negligence against the deceased and providing for deduction of 50% compensation amount therefor, has not been examined as the respondents did

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A not assail that part of the finding of the High Court. [Para 13][520-B-F]

1.5 In the facts and circumstances of the present case, no interference under Article 136 of the Constitution is warranted. [Para 14][520-G]

B *A. Sridhar v. United India Insurance Company Limited and Anr. (2011) 14 SCC 719 : [2011] 11 SCR 386 – held inapplicable.*

Case Law Reference

[2011] 11 SCR 386 held inapplicable Para 6

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8411 of 2015.

From the Judgment and Order dated 01.04.2015 of the High Court of Chhattisgarh at Bilaspur in Misc. Appeal (C) No. 1100 of 2011.

Ms. Sumita Hazarika, Adv. for the Appellants.

D The Judgment of the Court was delivered by

E **A.M. KHANWILKAR, J.** 1. This appeal, by special leave, emanates from the judgment and order dated 1st April, 2015 passed by the High Court of Chhattisgarh at Bilaspur in Misc. Appeal (C) No. 1100 of 2011, partly allowing the appeal filed by the appellants herein (owner and driver of the offending vehicle) against the award passed by the Motor Accident Claims Tribunal, Koriya, Baikunthpur, Chhattisgarh (hereinafter referred to as “**the Tribunal**”), in Claim Case No.22/2008 dated 21st September, 2011, on the finding that the deceased was liable for contributory negligence to the extent of 50% and as such, after deducting 50% of the compensation amount, the respondents/claimants would be entitled to a sum of Rs.3,86,500/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization.

G 2. Briefly stated, the respondents claiming to be the heirs and legal representatives of the deceased Krishna Kumar Sahu alias Tipu Sahu, son of Dashrath Sahu, filed a claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short “**the Act**”) for compensation, amounting to Rs.20,21,000/- on account of the death of Krishna Kumar Sahu in a motor accident which occurred on 14th November, 2006. Respondent No.1 is the widow of deceased Krishna Kumar Sahu. Respondent Nos.2 to 4 are the minor children of the

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deceased and respondent Nos. 5 & 6 are the parents of the deceased. They asserted that when Krishna Kumar was in his Pan Shop near the bus stand of Village Kathghor, appellant No.2 Prem Lal Rajawade came to his shop on his motorcycle bearing registration No. CG 16C/5171 with a friend, Narendra Panika, at around 1.00 P.M. and cajoled Krishna Kumar to accompany him to Village Belia. All the three left for Village Belia on the motorcycle. While returning back from Belia, when they reached Khaad Naala, the motorcycle skidded due to high speed as the driver lost control over it. Consequently, all the three persons travelling on the motorcycle were injured. The motorcycle was driven by Prem Lal all along. They were given first aid at Government Hospital, Sonhat and then referred to Charcha Regional Hospital for further treatment. Krishna Kumar died en-route to Charcha Hospital. In this background, the claim petition was filed, which was resisted by the appellants.

3. Admittedly, appellant No.1 is the owner of the offending vehicle and appellant No.2 is the son of appellant No.1 who went along with the deceased on the offending motorcycle on the date of accident. According to the appellants, however, the motorcycle was being driven by Krishna Kumar and not appellant No.2, as alleged, when the accident took place. Appellant No.2 was sitting in the middle and Narendra Panika was sitting at the back, as pillion riders. Krishna Kumar was driving the motorcycle rashly and at a high speed. He was told to slow down but he did not pay any heed to it and eventually the accident was caused. In other words, the deceased Krishna Kumar was himself responsible for the accident.

4. In light of the competing claims of the parties, the Tribunal framed four issues and finally answered the claim petition in favour of the claimants. The Tribunal accepted the plea of the claimants that the offending vehicle (motorcycle) was driven by Prem Lal (appellant No.2) at the relevant time and had caused the accident due to rash and negligent driving. The Tribunal then determined the quantum of compensation amount on the basis of monthly income of the deceased estimated at Rs.3,000/- and applied multiplier of 15. Besides, the Tribunal awarded lump sum amount of Rs.25,000/- towards funeral expenses, loss of love and affection due to the death of the deceased. The Tribunal determined the compensation amount at Rs.3,85,000/- to be paid with interest at the rate of 7.5% per annum from the date of filing of the claim petition until its realization. The appellants assailed the said decision

A of the Tribunal by way of First Appeal before the High Court of Chhattisgarh at Bilaspur.

5. The High Court reversed the finding of fact recorded by the Tribunal that the offending vehicle (motorcycle) was driven by Prem Lal (appellant No.2) at the relevant time and instead found that the deceased himself was driving the motorcycle and had caused the accident. On that finding, the High Court proceeded to hold that being a case of contributory negligence, the claimants would be entitled to only 50% of the compensation amount to be determined by it. With regard to the quantum of compensation amount, the High Court opined that the Tribunal failed to provide for addition of 50% to the actual income of the deceased towards future prospects and also deduction of 1/4th of the income, instead of 1/3rd. Further, the amount awarded towards funeral expenses and loss of consortium for the wife and loss of love and affection towards the children and parents, was enhanced to Rs.50,000/-. On that basis, the High Court opined that the total compensation amount payable would have been Rs.7,73,000/-, but after deduction of 50% of that amount towards contributory negligence, the amount actually payable to the respondents – claimants would work out to Rs.3,86,500/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. This decision is the subject matter of the present appeal at the instance of the appellants (owner/driver of the motorcycle).

6. The foremost contention in this appeal is that the High Court having concluded that appellant No.2 was not driving the motorcycle at the relevant time and applying the exposition in the case of *A. Sridhar Vs. United India Insurance Company Limited and Anr.*,¹ the claimants at best would be entitled to compensation on ‘no fault liability principle’ under Section 140 of the Act, for it was a case of accident not because of fault of owner of the vehicle or because of the fault of any other vehicle. It is urged that no liability can be fastened on the appellants for the negligence of the deceased, much less on the pillion riders. It is also urged that the appellants come from a very humble background and are engaged in ordinary agricultural labour work. They will not be in a position to pay any compensation amount, if awarded. It is also contended that there was no relationship of master and servant, principal/employer and employee between the deceased and the appellants which alone could

H ¹(2011) 14 SCC 719

have been the basis for awarding compensation, much less fasten liability on the appellants to pay such amount on the principle of vicarious liability. It is submitted by the appellants that the High Court's decision of fastening the liability on the appellants of Rs.3,86,500/-, with interest at the rate of 7.5% per annum, deserves to be set aside and the appellants ought to be absolved from any liability. Alternatively, it is submitted that the compensation amount be determined under Section 140 of the Act and not under Section 166 of the Act.

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7. Although notice has been served on the respondents, no appearance has been entered on their behalf. As a result, the hearing of this appeal had to proceed *ex-parte* against them. We have heard Ms. Sumita Hazarika, learned counsel for the appellants, at length.

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8. The appellants may be right in contending that in cases where the accident occurs without any fault of the owner of the vehicle or the fault of the other vehicle, the liability to pay compensation, at best, must be determined in terms of Section 140 of the Act as has been held in *A. Sridhar* (supra). It is true that the High Court in the present case has overturned the finding recorded by the Tribunal that the motorcycle was driven by appellant No.2 at the relevant time when the accident occurred and, instead, concluded that the motorcycle was, in fact, driven by deceased Krishna Kumar. In that sense, the accident occurred neither due to the fault of the owner of the vehicle (appellant No.1) who, admittedly, was not present or travelling on the motorcycle at the relevant time nor due to the fault of any other vehicle. However, on a deeper scrutiny of the materials on record, we are of the opinion that the High Court committed manifest error, an error apparent on the face of the record, in reversing the finding recorded by the Tribunal that the motorcycle was being driven by appellant No.2 (son of appellant No.1 – owner of the motorcycle) and had caused accident due to rash and negligent driving. We are conscious of the fact that the respondents – claimants have neither come up in cross appeal against the reduction of the compensation amount on the finding of contributory negligence nor have they filed any cross objection regarding reversing of the crucial finding of fact by the High Court. However, it is well settled that in motor accident claim cases, the Court cannot adopt a hyper-technical approach but has to discharge the role of *parens patriae*. This appeal being continuation of the claim petition *albeit* at the instance of the owner

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A (appellant No.1)/alleged driver of the vehicle (appellant No.2), we consider it appropriate to examine the approach of the High Court in reversing the finding of fact recorded by the Tribunal on the factum of motorcycle being driven by Prem Lal (appellant No.2, son of appellant No.1 owner of the motorcycle) at the relevant time and also that he had caused the accident due to rash and negligent driving. We are inclined to
 B do so as it is open to the respondents to support the decree whilst urging that the finding against them recorded by the High Court on the matter in issue ought to have been in their favour as has been held by the Tribunal.

C 9. The respondents, in support of their claim that the deceased Krishna Kumar travelled as pillion rider and was sitting in the middle, between the two other persons who were travelling together on the motorcycle, had examined witnesses who spoke about the fact that Prem Lal along with Narendra Panika came to the Pan Shop of deceased Krishna Kumar and cajoled him to accompany them to Village Belia.
 D Krishna Kumar agreed to go with Prem Lal and when he left his Pan shop, the vehicle was being driven by Prem Lal (appellant No.2). The witnesses have also unambiguously mentioned that when they reached Village Belia and left from that Village, Prem Lal was driving the motorcycle and Krishna Kumar was sitting in the middle and Narendra Panika behind him. The witness Jawahar Lal (AW-5), has also stated
 E that while he was going to Sonhat from Baikunthpur in a jeep, he saw Krishna Kumar going with his friends on a motorcycle and sitting in the middle. Few minutes thereafter, the accident occurred. The respondents, through their witnesses, have also established that the motorcycle was owned by appellant No.1 and appellant No.2 used to drive that motorcycle
 F himself. The appellants did not even produce any tittle of evidence, except the bare words of the appellants and their witnesses Narendra Panika (DW-2) and Jai Prakash (DW-3) who are obviously interested witnesses. Taking the entirety of the evidence on record, the Tribunal in paragraphs 17 and 18 of its judgment observed thus:

G “17. Examining the witnesses Gayagtri (AW-1), Rajkumar (AW-2), Sanjay Pratap Singh (AW-3), Bhagwat Prasad (AW-4), Jawahar Lal (AW-5), Sandeep Kuma (AW-6) and the documents exhibited it was found that on 14.11.2006 near the Khad Naala near village Kailashpur motorcycle no.CG 16C/5171 met with an accident,
 H and the riders of the motorcycle Premlal, Narendra Panika, and

Krishna Kumar were injured. Krishna Kumar was seriously injured and therefore, he died while being taken to Charcha hospital. A

18. From the statement of applicant no.1 Smt. Gayatri Devi and the Criminal Complaint no.39/08 before the Chief Judicial Magistrate, Baikunthpur, prima facie case against Premlal Rajwade under section 279, 304A of IPC has been registered on the basis of the witnesses and documents and the matter is pending before the court. These facts have stood the test of cross-examination.” B

10. Again, in paragraphs 22-24, the Tribunal negatived the plea of the appellants being far-fetched and accepted the version of the respondents – claimants that the motorcycle at the relevant time was being driven by Prem Lal (appellant No.2) and he had caused the accident due to rash and negligent driving. Paragraphs 22-24 read thus: C

“22. On the basis of the above mentioned statements of the Defendant Premlal (DW-1), Witness Narendra Panika (DW-2), and Jayprakash (DW-3) the claim of applicants that Krishna Kumar died in a motorcycle accident is proved. D

23. The defence of the defendants is that on the said date the motorcycle was being driven by deceased Krishna Kumar. Defendant witness Premlal (DW-1), Narendra Kumar (DW-2), and Jayprakash (DW-3) in their chief examination have stated that while going back from Kailashpur the said vehicle was being driven by Krishna Kumar. Krishna Kumar was driving the motorcycle in high speed and negligent manner, due to which he was not able to control the vehicle and accident was caused. Witness Premlal (DW-1) has refuted the claim of the applicants in his cross examination and has stated that deceased Krishna Kumar knew how to drive all kinds of vehicles. But he has conceded of not having any knowledge whether Krishna Kumar had any driving licence or not. This witness has stated that the deceased had scooter for himself. However, the defendants have not been able to produce any reliable evidence as to the ownership of the said scooter and neither any valid licence to prove that Krishna Kumar had a license to drive to vehicles. Narendra Panika (SW-2) has also not produced any documents relating to the vehicle of the deceased neither relating to the driving license of the deceased. Witness Jayprakash (DW-3) has admitted that he did E
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- A not see the accident happening. In this situation, the burden of proof is on the defendants to prove that deceased had a valid driving licence and that he was the one who was driving the motorcycle. The defendants have failed to produce any reliable evidence in this regard. The vehicle involved in accident CG-16/
- B C5171 is owned by Mohar Sai and it was regularly driven by Premlal (Defendant no.2), if he or his father (defendant no.2 and 1) had allowed deceased Krishna Kumar, so both of them are definitely liable for the accident, because without finding out whether the deceased had a valid driving license, the defendants allowed him to drive the motorcycle.
- C 24. Therefore, on the basis of the above evidence it is decided that on question no.1 and 2 the applicants have been able to successfully prove against the defendants. On the other had the defendants have not been able to prove their case on question no.2. Therefore, the question no.1 is adjudicated as Yes and
- D question no.2 is adjudicated as No.”
11. The view so taken by the Tribunal, it appears to us, was not only a possible view but also in conformity with the scale to be applied for appreciation of evidence in motor accident cases namely preponderance of probabilities. Nevertheless, the High Court reversed
- E this well considered finding of fact recorded by the Tribunal by merely observing thus:
- F “11. After evaluating the evidence of witnesses, it would reveal that the Applicant had examined the eye witness Sanjay Pratap Singh as A.W.3, but he has stated in cross examination that he has not seen the incident and reached the spot after the accident had happened. Similarly, witness Bhagwat Prasad only says about the fact that before the occurrence of accident, the vehicle was driven by Premlal. Another witness Jawharlal Sahu has stated in his cross examination that he has not seen the incident. Therefore,
- G taking into statements of witnesses alongwith FIR wherein it is stated that at the relevant time, the vehicle was being driven by the deceased himself appears to be more plausible. Ex.D-4 is a document of MLC of two persons, which is an intimation sent by Doctor Ex.D-4 purports that the doctor intimated the police about the injured persons and it contains the statement that 3 persons
- H were travelling in the motorcycle and the driver of the motorcycle

had died. This was sent on 14.11.2006 at about 11.45 p.m., that is the date of accident and immediately after the incident happened. Reading it alongwith the statements of pillion riders who were also travelling on the motorcycle would clearly go to show that that at the relevant time, the vehicle was being driven by the deceased Krishna Kumar Rajwade itself.

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12. So taking into account the facts which have emerged from evidence and documents on record, I am of the opinion that the finding of the learned Claims Tribunal that at the relevant time the vehicle was being driven by Premlal Rajwade appears to be not sustainable and is set aside. Accordingly, it is held that deceased was also liable for contributory negligence for the accident.”

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12. The entirety of evidence has not been analysed by the High Court, including the material evidence of witnesses who had seen Prem Lal (appellant No.2) driving the motorcycle and deceased Krishna Kumar sitting behind him as pillion rider, whilst leaving his Pan shop and when they reached Village Belia and again, when they left that village, including having been seen by Jawahar Lal (AW-5) on the way just before the occurrence of the accident. The High Court has not discarded the version of the claimants’ witnesses as untruthful. Besides the oral evidence adduced by the claimants, the Tribunal also took note of the police papers in respect of the Criminal Complaint No.39/08 filed before the Chief Judicial Magistrate, Baikunthpur, for offence punishable under Sections 279 and 304A of the Indian Penal Code and the statement of the witnesses referred to therein. The High Court, however, selectively relied on the statements of interested witnesses examined on behalf of the appellants and Exh. D-4 and Exh. D-5. Exh. D-4 is a document of MLC of Narendra Panika who presumably gave intimation that Krishna Kumar was seriously injured and that he succumbed to injuries before he could be shifted to the hospital. The version given to the doctor by appellant no.2 and Narendra Panika was unilateral and not verified from independent eye witnesses before recording the same. Exh.D-5 was similarly founded on the intimation given by the two injured persons who obviously did not reveal the correct position for reasons best known to them. Notably, the eye witnesses examined by the claimants have neither been discarded as untruthful nor has the High Court found any contradiction in the version given by them. Their version remained unshaken during the cross-examination. As such, the High Court

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- A committed manifest error in reversing the finding of fact recorded by the Tribunal by solely relying on the version of interested witnesses examined by the appellants in defence. On the other hand, the analysis of the totality of evidence by the Tribunal is consistent with the principle of preponderance of probabilities.
- B 13. Once this finding of the High Court becomes doubtful, the principal argument of the appellants must fail, in which case the question of applying Section 140 of the Act does not arise. For the same reason, the exposition in the case of *A. Sridhar* (supra), will be of no avail to the appellants. In other words, we find no infirmity in the finding recorded by the Tribunal that the motorcycle was driven by Prem Lal (appellant
- C No.2) at the relevant time and had caused the accident due to rash and negligent driving resulting in injuries to all the three persons travelling on the motorcycle, including the deceased Krishna Kumar who succumbed to the injuries before being admitted in Charcha Hospital. No serious argument has been made about the quantum of compensation
- D determined by the High Court providing for future prospects and deducting 1/4th towards personal expenses, including applying the multiplier of 16. Even if any argument in that behalf is available to the appellants, as the amount involved is insignificant and the difference between the quantum determined by the Tribunal and the quantum determined by the High Court is only marginal (the Tribunal determined
- E Rs.3,85,000/- and the High Court determined Rs.3,86,500/-), we decline to interfere in exercise of our jurisdiction under Article 136 of the Constitution. At the same time, we must clarify that we have not examined the justness of the finding of the High Court regarding contributory negligence against the deceased and providing for
- F deduction of 50% compensation amount therefor. For, the respondents have not assailed that part of the finding of the High Court.

- G 14. Taking overall view of the matter, we have no hesitation in concluding that in the facts and circumstances of the present case, no interference under Article 136 of the Constitution is warranted. Hence, this appeal is dismissed with no order as to costs.