

Verbatim for

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REFRESHER COURSE FOR MACT COURTS

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SESSION 1: ROLE OF MOTOR ACCIDENT CLAIMS

First of all I introduced all the speakers for today this session- Dr. Prakash is Professor at National Law School Bangalore and before that he has been Session Judge and with a varied experience so I think he have a lot of things to share with us. I just take this forward not wasting too much time I think we should get to know each other so we will have a quick round of introduction. So we will start from that side we like to know you all. Anand from Tamil Nadu District Judge I am Bala Krishna District Judge from Tamil Nadu. I am Govind from Raipur. Saroj Das from Chattisgarh I am L.D Vishwar Orrisa ... Welcome to NJA and I'll just turn the session to Sir The same old fraternity but after my superannuation I switched on the academics and in academics I am there for about 11 years and with this bent of mind actually I have come here to share my views with you and also share the knowledge which you have gained and gaining so that I can also have a new dimensions for academics and with this actually I am thankful to Shruti for giving me an opportunity Second thing is as you know the earlier program I was supposed to be with you between 2:30 and 3:30 but I made a request to Shruti that the problem of mine is to get back to Bangalore by flight by 4:00 and when I mentioned this thing to her she immediately reorganize the whole program for the day and I have been brought as a first batsman and while Chandrasekaran who is supposed to be with you for these two hours in the first portion of the day has been shifted to 12 noon to 3:45 so that he can also join me in the same flight in which we are going. This shows actually the justness and fairness of Shruti in organizing and why I am mentioning is in Motor Vehicle Claim Case is concerned we discuss and decide about the compensation amount and what type of compensation is to be paid and whether the compensation which we are going to pay is just and proper the most important thing and if it is not just and fair just and proper. It is not equitable then it is not a compensation at all and of course we can't make a situation of paying compensation as a bonanza for the people are concerned so we have to have a balancing role is concerned and first and foremost I must say that after working in judiciary for quite number of years and sometimes we come to the cases at that point of time we feel that the old set of mind of adversary proceedings and he who comes to the court must prove the claim Section 102 103 of the Evidence Act all these things come in our mind. Second thing is we also think sometimes that the judge was totally impartial yes of course the judge may be impartial I don't deny or disapprove when the particular fact is concerned but should he be mute or should he be totally inactive is the whole question he is not an umpire in a football field where actually the two players fight or plays the game and ultimately the umpire is there but specially in a motor vehicle claim case he is to be more pro- active that is most important role which we have to bear in mind the change of mind setup is the most important thing in fact the continuous process of learning as you know we used to unlearn what we have learnt earlier not that we have learnt something and with the traded part we actually go in that particular direction and the continuous process of learning is to make the unlearning process and after that unlearn what we have learnt then try to know something so that the new knowledge can become a source of inspiration for us with this motto the continuous process of addiction is though over almost across the world and in this background NJA also has taken up Refresher Course and Re- orientation Course for officers

who have actually been interested in the job and responsibility of administering justice is concerned.

First and foremost I would like to mention to you the concept of justice as reflected in the Preamble of the Constitution is Justice Social economic and political it's not merely Justice that is list between two parties are concerned. See this justice concept when you think about political justice economic justice social justice have you attained this aspect and the common man of India is in position to have because when we find the motor vehicle accident specially many times the people run around the police station because the police officers are the first authorities who came into picture and how the police treat and what are the difficulties the person has got to obtain the document and after having obtained the document how to process the document is the next thing so Article 39-A comes to the picture where actually the legal services authorities of course all of you or the ex- officio of the legal service authority and of course this concept of legal service authority was not so popular when I was there in service but now it has gain lots of importance and therefore I need not tell you it's aspect and therefore we will be thinking about the concept of justice first and foremost the preamble the constitution the opening the key opening word to understand the constitutional sprit is the most important thing of course unless we apprise ourselves about the constitutional sprit and constitutionalism it is not possible to render justice. See in fact it was observed by Supreme Court in one occasion if you look at the poor man who stands and not the person who actually has got all the benefits that this the more important thing which we have to have in mind. In western countries of course when we think about motor vehicle accident accident do occur not that accidents do not occur there but the system is there evolved developed is of such nature that soon after the accident the insurance company will come and offer all the assistance to the victim and whereas in our country yet we have not reached that stage and whether the vehicle is insured or not God alone knows and the owner only knows if not the God and even the police will not be knowing though there is a provision in Motor Vehicle Act that running a vehicle without insurance is an offence and how many cases have been booked and this is where it actually comes. We actually start at the negative aspect like why I should insure my vehicle and lost my money on insurance and if I can run the vehicle without insurance I am saving so much money this is the attitude the owners of the vehicle have and when of course the law is specific that vehicle must be insured and running the vehicle without insurance is an offence punishable under law both driver and owner is liable and when such a vehicle is involved and the person makes the accident what is the situation of the victim is concerned and the owner of the vehicle may say hands up I don't have money the driver will equally say then how actually we have to one aspect which has to be taken note in the social justice scheme is concerned and that's why in the first concept when we look at compensation and damages because I don't want to have a regular classroom lecture here. Let me have an interaction with you on this aspect the concept of compensation and damages as you or the damages is the one which comes or starts from the contractual liability. A person has suffered a civil wrong so he must be compensated this is the most important thing earlier you know we just used to see that if there is contract or not and if the contract is not there then we cannot help you so the common law courts took a very conservative

view the equity developed the chancery courts developed in England and they started to find that we must have some sort of remedy to person who has suffered at the hand of other. Everybody got a right to act as he like but when he does what he likes he should not infringe other's right because the other person has also got the equal right to live in this universe and when we look at this we forget this principle then it will be chaos. Many of the civil wrongs have been criminalized and on account of criminalization we found provisions of the nature in Indian Penal Code is concerned and also in any other law is concerned otherwise many of the crimes were basically civil wrongs or tortious acts and when this concept of torts developed we never had any codified law at that point of time compensation was given and the amount of the compensation was decided by the courts of course and ultimately of course whatever the compensation is awarded the people used to have it but gradually in India we had some legislation like Fatal Accident Act statutory recognition started what was actually a thing of tortious liability because at that point of time we were not having Motor vehicle and we were not having the vehicles which are run now SUVs like other things and Indian society was mainly oriented on agriculture and whatever mode of communication mode of transportation we had horses and other things and nothing to do with the mechanical cars and machines like Fatal Accident Act came somebody is injured then the victim must get some compensation this is the concept of development of law as far as the compensation started then we had in picture The Workmen Compensation Act Fatal Accident Act then comes The Workmen Compensation Act the workmen who are employed and meets with any accident suffers an injury or death can we deny and throw out well the contract relation between the workman and the employer do not contemplated and the incident that happened and ultimately they used to say no compensation or if you are entitled to compensation and by the time it will be worked out probably the dependants of the deceased workman or the injured workman so a mechanism of having early dispute redressal was started and Workmen Compensation Act came into picture and in the mean time of course we had the Motor Vehicle Act of 1939 and that did not contemplated anything about the compensation earlier the amendments were made later on bring Section 110 and ancillary provisions to bring out the compensation concept Motor Vehicle Compensation Tribunal this is how the whole system evolved and now we have reached of course earlier from 1950 we had no constitutional guarantee we were only subjects under the British Rule but after 1950 we have adopted the Constitution for ourselves the Preamble of the Constitution envisages that the Constitution is have to do Justice Social Economical and Political so of course equality before law and equal protection of law and these are the concepts that we have adopted. The responsibility of the state the welfare state has also increased simply saying that well we have provided some remedy by having the courts or tribunals is not sufficient in fact earlier as you know the courts were actually taking care of the situation and as I said earlier our mind set was actually tuned to the extent that he comes to the court must prove the case if he doesn't prove he will not get the decree and if he fails to prove he has to walk out and no actually gradual transformation took place with this particular thing the concept of today's discussion we have taken and I have been asked to share my views and thoughts with you about the role of tribunal and in this background as you all are aware certain provisions of law we should have in mind with reference

to AIR. See all of us are familiar with FIR because who so ever the Magistrate or who so ever is the advocate first and the foremost thing id Fir delay in FIR dangerous to prosecution case and is fatal also the mind set is tuned with the Fir is concerned but the concept of AIR was introduced and this is the most important thing which has to be borne in mind how many police officers are doing it Though way back in 1999 the Act was amended and the concept of AIR was introduced to the new Motor Vehicle Act many police officers were not actually and SC had to intervene and to say well please look at this thing and issue directions to the HC and also direction to the government especially to the Police department relating to this AIR is concerned and I don't know because right now I am not in touch with that particular aspect of the administration of the court is concerned. You will be in the position to tell me in your state whether the AIR has been properly implemented or not and merely sending the AIR by the police officer is not sufficient and along with Air he has to certain things. Why this AIR concept came as I said earlier we never had the concept of paying compensation to a victim a person suffers a pedestrian is hit in fact last week or about 15 days back an even took place in Bangalore a retired District Judge about 43 years old or so actively associated with Arbitration and other things and also in the social life he was crossing the road and that is the road which interlinks between the Bangalore Airport and Bangalore City while he was crossing the road a taxi or car came and dashed against him and the old man tossed like a ping pong ball and ultimately he died instantly why I am telling this particular incident is whether the old district judge was right or wrong see accidents took place and the people actually when they do certain things the other person also would be affected and any child while playing on the street and a person was reversing his tempo and he did not notice that child a was playing and he ran over the child and he dies at the spot the tempo driver ran away from the spot so these kind of incidences we can foresight because any number of things and n number of cases you have actually dealt with and noticed it in your area because each one of you are responsible person. Why I am telling all these things is in all these things whether the police take the action immediately or whether actually police kept quite sometimes how I am not talking about the corruption of the police department please don't misunderstood that I am talking about the corruption in police department and all. First let's be honest about things first and the foremost the police say we actually burdened with law and order and we are also burdened with situation for providing escort for ministers. But SC has stated that it can't be excused in fact crime detection must be separated from the organizations and SC gave direction in Prakash Singh Badal Case after this case again the things went on of course the police department is asked to re- orient or reshuffle the nature of working then okay crime is one aspect and the other one is relating to accidents if you go to the police station and report an accident first and the foremost thing the police man will ask Sir is there any death If there is no death we will come later on you park the vehicle somewhere else or both of you compromise yourself and if your vehicle is insured you claim the insurance amount this is what the answer and many times they will say Sir you record it and give me the endorsement I'll give you the insurance claim then who is getting the money is it the vehicle owner for loss of his vehicle but what about the poor chap who has lost his life or sustain injury. So this is where we have to think about the insurance companies they actually send their inspectors the

minute you file insurance claims they send their inspectors to get evaluation made and based on the evaluation vehicle is going to be repaired or a the vehicle is going to be replaced but what about the victim do the insurance company give any respond they don't even respond they keep quiet and they will say if you suffered any injury or loss you go to the court and let the court give the directions or instructions to us then they will pay. This is the social thing I am talking so why this type of thing is this is the thing which make Parliament to think that the Motor Vehicle Act requires the amendment and the 1988 Motor Vehicle Act was amended and new provisions have been made to report accident information report whether the death or an injury the police are under a obligation to report the accident to the Motor Vehicle Tribunal because police often think problem is going on in family court or in a civil court when you call the police will say no no we won't come but when a Magistrate gives a ring immediately they will come this is one thing which you will find and why I am telling you this because mind set is FIR magistrate FIR Magistrate so FIR and Magistrate. They never think about AIR and this is where we find the inaction and SC has to come around once again in though not in Prakash Singh Badal Case but it came in Jai Prakash Case v National Insurance Company it is one of the most important case and I find in the course material which Shruti has compiled in fact she has taken a lot of pain to compile this refresher course but I find that this particular case is not here and I request Shruti to incorporate Jai Prakash Case and this is the case actually the situation started and a relook was done see for everything we require a sort of push from the court Mental Health Act was enacted as you know by the Parliament it was kept quiet and something happened in Tamil Nadu a fire hazard took place and many people who are actually kept in the mosque or area mentally ill people were kept they were left to die newspapers reported immediately SC took suo motto notice and issue directions then the Mental Health Act got activated. Parliament has passed Mental Health Act repealing the lunacy Act the old one but the executive never ever bothered to implement it similarly the case in Motor Vehicle Act 1999 the law is amended and executive authorities kept quite. They did not even bother only in 2010 the SC has to say well this is the thing please have a relook at and what the courts must do and what the police must do was decided for everything we require a whip from the SC and there actually the SC said AIR must be prepared and must be sent to MVCT and several states have issued I am told the guidelines of course Delhi has taken a very leading role as far as this aspect is concerned but some of the states have not implemented it and some of the states have implemented in a half hearted manner there is descendi of AIR along with AIR what should be there what should not be there is the most important only report will come and the report will be filed and a MC Case or MC number ultimately that particular matter will b kept pending and only once the person will come. Is it the object of the AIR And the proceedings will start under Section 158 (vi) and 166 (iv) of the Motor Vehicle Act and this one aspect which we have to see the first and the foremost the tribunal on receiving of the report from the concerned jurisdictional police has to find out why this is not to facilitate a poor person who can nit approach the court of course we say where there is a right there must be a remedy and a person right is there but he is not aware of it and when he is not aware then is it not the responsibility of the state to make him aware in fact judiciary is not a state according to Article 12 earlier view because if you look at the Article 12

of the Constitution it speaks much about the Parliament and the executive authorities but it does not talk about judiciary but in today's case there is dramatic change and it is said that Judiciary also is wing of the state and the responsibility what had been entrusted to the courts have been actually taken away and been entrusted to the tribunals because the trappings of the civil court are too much and therefore they thought here is not trappings and let have little modernize thing as we find the situation of the PSUs in administrative law because the governmental red tapism is so much and we cannot have the remedy therefore what they thought instead of having the trappings of governmental red tapism we will think public sector undertakings that's how they started administrative law likewise in judiciary also we thought of having the situation of constituting the tribunals because a court means always a picture of Evidence Act and all these things come into our minds and if this does not come here the adversarial system comes so the person who seeks the remedy and has not placed the material he has to go out therefore the concept had to undergo the change therefore we have to introduce the concept of tribunals and in this the wording is used is inquiry please note the word is inquiry it is not the trial the civil trial the criminal trial we are familiar with it but it is not the trial which have contemplated the motor vehicle case what is contemplated the motor vehicle case especially accident claim tribunal case is inquiry so when inquiry is to be done you have to be pro- active you cannot say that the person has not brought therefore I cannot give any remedy no this is not the thing if he has not brought try to find out of course I do understand the limitations of the officers which are concerned because I am not talking this but I am talking in reference of the responsibility which I had and with this limited source of staff will you be able to make inquiry and already you have been over burdened with legal services authorities cases and also various other cases because earlier when I entered service as a district judge and when I came out by that time things were different. We are only concerned with administration means administration of our courts and administration of the most staff and the courts sub ordinate to us. There was a situation earlier when I entered the service but that is not like now as a district judge you have responsibilities you not have to only administer your courts and the court sub ordinate to you but you have to look at other aspect also what you had not thought of and therefore I do agree that you may say Sir we are not having proper staff and we are over burdened but the responsibility goes and therefore we have to be more careful so here first and the foremost thing is whether the AIR is properly send and what actions the MCAT take place that's why the work of MCAT which was earlier decided by the principle district judge has been taken away and had been entrusted to a separate tribunal and of course in some places the burden of work is not more you might be getting the MCAT cases also along with the other cases and if the work load is too much definitely you will be given quotas and all those things which I don't want to discuss with you because there is policy of HC is concerned and I think the number of cases what to do you decide in MCA cases are concerned and also the other cases are concerned the equation and all these things which I don't want to discuss with you but incidentally I cannot avoid that see what is the procedure to be contemplated here do you expect or you expected to follow the same procedure has been done in the civil court relating t original suit you are not suppose to do it in fact you are supposed to do a summary inquiry and I don't use the word summary

trial because the summary trial is used in criminal cases but I don't use the word summary trial you are expected to use summary inquiry and summary procedure according to the evidence all the aspects what are there disputed civil litigation cannot be expected to come here and the list is whether the particular person see when once the accident has taken place to once the claim has put forth what is the evidence which is required see this is where we have to be very careful about the summary procedures aspect is concerned and coming back to once back to AIR you are supposed to record based on the information provided by the police relating to person to what extent he is entitled to compensation and issue a notice to the insurance company and also to the claimant to have their amount if there are any specially the claimant if he has got some objection or more claim then he can file a petition and wherein the these things will be clubbed and ultimately the court is going to give a finding is concerned why I am telling all these things of course many of the people are doing it and some places I don't know whether I don't know whether you are doing it or not but I have come across many cases where actually they bring the AIR reports give MC numbers and after some time when MVC number is find take it on end otherwise keep the MC file closed so this is not the thing what you are expected what is expected is that you have to determine based on of course whether the police has given this information or not this is the most important thing therefore when SC gave direction in Jai Prakash case it actually said that what the police have to do and how actually the courts have to work out. The directions the police authorities were actually incorporated in the case of Jai Prakash as reported so this is where Justice Ravindra had to deal with this is where we people are docile way of doing things and that's why the NJA has taken a positive role in re-orientation course wherein the thoughts of you and thoughts of others could be exchanged this becomes a common platform to have exchange of views rather than a classroom experiment is concerned and this is where actually the SC specifically stated how actually there must and must go and collect the death information is there death certificate or income certificate or income details and then submit it to the tribunal tribunal based on that has to work and even in the injury case of course injury cannot be assessed the police cannot collect all the information relating to injury what type of injury has occurred they collect and then you must pass an order and based on that order you have to communicate to your victim and then the victim has to agree or disagree if he agrees okay the matter comes to an end and if he disagrees then the situation would be that file a MVC case so this is where we have to be little more active and inquiry conducted I told you it is not actually a trial it is totally an inquiry and if you find that some information is hidden somewhere you can call upon the authorities to produce or furnish those details and some certificate is required or some medical opinion is required but what we do we asked the claimant okay produce the medical certificate see claimant says well sir I went under an operation and treatment in such and such hospital and the hospital authorities are not giving and when he goes there these are all sorts of answer and are we in position or not to issues summons but what we do you have not brought the best evidence so you suffer see this is where our mental set up I am talking about mental set up change of mental attitude is required and this is where we have to be little more practical issue a direction to the concerned hospital well if such person has undergone treatment or has actually taken the treatment produce those records I don't think any of

the hospital will refuse and once you issue a summon or a notice hospital produce the records and this is where actually the victim cases are the related document collection is concerned and you have to do a sort of forensic investigation see this is the most important thing well actually considering a criminal case police do investigation related to the thing and ultimately the case is filed and the Magistrate or Session Judge try to find out that the case is proved beyond the reasonable doubt or not but as in case of motor vehicle case it is you who have to do the investigation to find out what is the compensation to be paid because just compensation is the most important thing it is not compensation which has been sought for in fact the just compensation is the concept which has evolved from equity and just fair and reasonable compensation Article 21 of the Constitution says that the state shall not deprive the life and liberty of the person otherwise then the procedure established by the law SC in Maneka Gandhi Case said that the procedure established by the law means just fair and reasonable procedure and not an unjust unfair and unreasonable procedure and if we shut ourselves and say you brought these things and therefore we are not in position to give you any remedy is it a just action of us Is it a reasonable action of ours Of course according to civil procedure court it's okay but if want to think about the social welfare legislation like this it is not so therefore we have to have a mental change or change of mental attitude relating to AIR and first and the foremost when the AIR comes find whether all the details which have been or which ought to be there are there or not otherwise you ask the police officer whether these reports are complete or not give those information to us then he will be going and find the information and it is easy for you to deal with a police officer in that context and once it comes you know the address of the person and you know who has to pay whether the vehicle is insured or not of course I am not saying here because I know my limits also to some extent that ask the police to file a case against the owner of the vehicle who has not insured because it is obligation of the police to do it and I am not giving any direction to file a case against him of course some of my friends in academics they do say that if the police have not prosecuted the owner who is not having the insured vehicle then the Claims Tribunal should issue a direction to police to prosecute then of course I am not because it's their duty to do it and of course in a way if you look at it maybe the correct view but looking at the ours limitation here because you can't have cross roads with the local officers the foremost find in our limits what we find you do and collect the information gather the information and with that information try to do some justice to the victim because many times the people who suffer will not be knowing where to go what to ask and what type of relief they have to claim then as all of you have come from a legal background I may not tell you because once you go to lawyer lawyer expect something there are some lawyers who are ambulance chasers and they say okay you pay so much amount later on and we will spend all of it on the work see this is a type of thing which is going on the field because why i a telling you this because I was also a lawyer like you earlier then I become a judicial officer like you and after that instead of going back to work as a lawyer so we have to take all these aspects and say and if you look at going to lawyer is very tuff job and right now we have legal service authority and what this authority do as you know they will say they will provide a lawyer in the court but collection of the information what is there that is the most important thing unless you collect the

information you cannot have the remedy and so the court tribunal has to use all its power vested in it and see that the information is collected information is facilitated to the concerned people then only you will bring social justice otherwise justice social what is reflected in constitution is only a myth and we are not discharging our duties effectively in proper manner that's why I am telling please bear in mind that concept of social justice is most important thing and that's where we have to be very careful and economic justice each one. In the beginning I have to share my thoughts with you I may tell you after my superannuation still I was thinking like a judicial officer and now 11 years have passed and now that habit has died and now I think like an academician. When you have worked as a civil judge or you have worked as advocate all the years an hour policy is 3 years or 4 years per transfer and a person is kept in MCAT for 2-3 years and by the time you will be transferred and by the time mental set up is there you will be going out that is the system how it is working see this is where we have to have change of mind is concerned and next we do pass of course I told you about the summary procedures which we have to adopt and I need not to go in detail what is summary procedure is and how the recording of evidence is done and etc because each one of you is senior officers and holding a pivotal post in the district and in fact the role of district judge is concerned he is the pivotal person between the HC and the subordinate court and he controls all the courts in the district therefore your role is of pivotal nature and even the public also notice and everybody comes and human rights courts all this various powers have been entrusted to him and therefore I may not go into it and how the summary procedure is to be followed and how the summary evidence to be recorded because during all these things it's almost like carrying a cold slate and I don't like to repeat those things and then protection of in particular case SC passed a direction and took note of point of the situation that people take money spend lavishly and come back to square one and lead the poor life there is a background in which the SC passed an order that whenever the minor claim is there or widow claim is there or accident victim claim is there huge amount is given if that amount is actually spent the person will and second thing is as you know when the money comes many people come people who are not friends or the people who are not relatives till yesterday overnight they will become friends and relatives because this man got the money and the main money is goes out of hand or the money is spent the person who came as friend and relative disappears so this is the hard reality of the life and therefore the SC said let us evolve the system of depositing the money okay good but mechanically they started depositing the money in the court I mean in the banks and that money have to be there in for 5 years for a minor son or the widow. Let the portion of the money be kept and how this 5 years they have to live and how these 5 years they have to manage and how these 5 years they have to educate themselves these all are the aspects no doubt money is there in the bank and whether the reflection of money kept in the back in the mirror give the result is the whole question. Therefore a system has been evolved that partially the interest must be given periodical interest must be given of course it's in your hand you can say well the money is kept and periodically interest must be given. Sometimes what happens the money is kept and if it is actually now it is cheque books and ATMs have come and these people have started to withdraw the money then is it advisable to do so Yes of course somehow the positive direction have been taken by the Delhi HC in this context

and there they have said the judicial officers must ensure that the account holder will not get the cheque book of course the Delhi HC asked it because the cheque book could be issued only for current account and FD accounts as I know the FD is concerned

Joint account also sometimes joint accounts are opened.

Yes there is a thing because the people who actually want to have this benefit are the poor class people or the people who are not economically I am a Professor and if I met with an accident and money is paid to me I know how to utilize my money in a wise manner but will a poor person will be in position to manage there is a whole but sometimes what happens based on the direction of the SC we started whether you are Professor who can manage yourself or whether you are a poor person who can't manage yourself both of you are equal. See the equality before law and equal protection of law does not mean that both must be treated equal that and treating equal as unequal itself is inequality therefore find out whether this particular person can manage or not and what we have to and what manner has to be and this is where we have to be little more careful and the amount has come from the insurance company it has to be deposited in the bank and you of course issue a direction to the bank to give the money and issue a cheque and what whether what has happened to that money and whether the said thing was made as a basis to raise a loan because nowadays there is loan also on the FDs and whether the FD have been made as the basis of the loan is a thing on that aspect do we have any control over it or we doing anything....

Of course in some states they have got and what I am not saying that totally what everybody is doing but I am just visualizing in as you say in Kerala

We have this CCD - Civil Court Deposit...

But in some places this is not happening that's what I am telling see what they do is they issue the amount comes the civil deposits what you are saying CCD and when once the brochure is there the money can be drawn by the Registrar or the preceding officer of the and they also share the covering letter and sometime they ask the advocate to deposit the money to the bank and see that the copy is given and sometime they don't do that see that's where the problem comes because if you issue a notice or any intimation to the banker that no loan should be raised unless the court is intimated or this amount should not be release unless the court is intimated that bank's manager will not record it in the thing this is where we have to take little more care if Kerala is doing very good but I don't think Karnataka is not doing and that's what i am telling you what we do I think she'll be able t explain in the better way because she is in service now

As for the...

Please be seated and you can use the mike what we need is your voice

Actually we ask the advocates itself in which bank it has to be deposited and as per their advice we deposit the same and for a particular period and after that

But they will eventually withdraw it see I am talking of the experience what I had and I know the same experience continues

Sir in Tripura there is a judgment by HC that we have to give direction for FD if the victim is minor then the entire amount is fix deposited till he attains the majority and for other victim we direct for fixed deposit for certain percentage and on maturity of that he or she is entitled to withdraw. We give direction in that way

Of course Sir in Karnataka in case of minors we deposit till they attained the age of majority

But what I am saying is that withdrawal the amount with the permission of the court the amount should not be withdrawn without the permission of the court.

In Delhi we specifically direct the bank to comply with the tribunal order we are getting the receipt from the bank authorities.

This type of compliance jurisprudence see this is what I am talking this type of compliance jurisprudence has not develop yet because we always thinks that our work is over once the judgment came that is what we actually think the compliance jurisprudence concept of following it up is not there see of course in criminal procedure court also there are certain provisions which says that the court can actually send a person on probation instead of sentencing him to jail. We are aware of that and we appoint probation officers whether the probation report are we receiving it no we don't of course because the first and the foremost thing as I told you work pressure. Sir we have so much of work day in and day out every day the cases come and we are disposing of and how much time we can devote for this particular probation work is concerned of course I do agree in criminal court it is very difficult unless the man power is increased but in tribunal where actually your work is only delegated only for this you can do and if it is not to be there we can move to HC so this is our problem we can ventilate our grievance that's what I am trying to say instead of saying that the inter- state is bad you cannot do it and in fact when I joined my judicial service our strength of district judges in Karnataka was hardly about 27 and today the strength of district judicial officers is ...what is it

I think more than 500

So much so many officers have come what I am saying s that it never stayed the same thing and I am taking help of her because she knows the latest position in Karnataka because I left 10 years back and see this is where actually the whole things come we have to ventilate our dreams and talents and now a days I think you are holding the biennial judicial officers conferences in each

state I don't know whether in Karnataka we are having biennial judicial conference so it is held under the control of the HC and all the HC judges will come and judicial officers they ventilate their grievances and HC takes note of it and also tries to implement it. I don't know how many states are having this healthy practice and law ministers many HC and SC judges also come and they do participate and they ventilate the grievance because one platform is required for judicial officer as a group to say what is the grievance and then only the HC can remedy the revolution has become in that particular manner that's why I am telling you this is one aspect you have to find out protection of amount I was talking to you you have to take care of protecting the amount and see that the amount is not type of misused amount is not abused and actually it reaches the person at a appropriate time and you deposit the amount with direction it should not be released five years 5 years how they are going to maintain no doubt you have granted something some amount of compensation and they have to maintained it for 5 years to receive the amount and if they cannot receive then the periodical interest and in that context are we conducting an inquiry what is the status of what is the education. For example a man dies leaving behind a widow and two children and therefore these children are need to be maintained by providing education are we taken what kind of education these children are going to have and what is the amount required for the purpose of the education and maintenance and how much money is spent for the procurement for the books and many people are not sending children to the government school where the education is free because even in our family also we don't send children there because we know what standard of education is there and therefore we want to send them in private school and better education is concerned. If you want to send your child to private school you have to spend money because theoretically the teaching profession was a noble profession but now we know and therefore we require money or are we actually spending our time in thinking how much money is required for this child this is where have to be more pro- active and this is not something beating around the bushes that our amount is directed and deposited in a bank for 5 years the banks also having the schemes of floating interest and interest rate is changed so which particular scheme is good and which particular scheme is bad it is to be decided and we actually take the case of the situation of the poor man who is not in position to decide for himself or herself and we are here to decide and whether the money is properly is deposited r not otherwise as he said a joint account is going to happen in the name of the litigant advocate and the victim see where the money and income is I think this is really shocking thing I am hearing a joint account in the name of advocate and the litigant lawyer and litigant relationship I never expected it will go on such extent . In which state it is

Delhi but now in Bombay we opened the account in the name of the claimant but the signature is there

Okay she is reminding me let us have a cup of tea then we will..Am I coming back or Chandrasekaran ...Ok I'll take 5 more minutes and then we have cup of tea and I'll say goodbye to you. So the third thing is the protection of the award amount I told you. You have to think about it in louder way and deposit the amount and the management of the interest is most important thing

and do not prepare stereotype orders because in Karnataka in one particular case I am prompted to tell you a situation occurred that 3 persons were the victims and the award was passed and while passing the award the court took consideration that the case was of all the three and award was passed and even the HC confirmed it the matter came to SC and said this type of award is not correct and look at the case of each of the claimant and pass the vendor one maybe the vegetable vendor and the other one maybe doctor and other maybe the teacher and you have to take each one case and one maybe having no dependence one maybe having dependence and this is how you have to look at. This is all the areas which you have to take in consideration and therefore try to pass order in respect of each of the claimant properly don't prepare a stereotypes orders and I am giving this example from Karnataka only where they pass the order for all the three people and they are entitled this much The SC said no each one of them is differently entitled and each one's case must be differ no doubt the accident is one no doubt the incident is one but the consequences of the incident is not one and this is the most important thing.

At many places they say why different order for each one pass a common order otherwise we will not agree the ...so sometimes Sir if there is 10 accidents and 10 persons have met with the accident and have injuries then why separate order for individuals...

See in that particular accident what happen 3 persons involved in same accident and they sustain injuries and courts passes the same order stereotype and said this is the whole thing and of course the court applied the principle of Sarla Verma's case in a very negative manner and ultimately they said this is the award passed and this was taken to the HC and the Karnataka HC confirmed that order and when the order was taken to SC the court said no you have to pass individual separate orders.

...

When the contributory negligence and all those things come see they contributed negligence theory is not there for example if the person is travelling in a bus and 4 or 5 persons are travelling in the same bus the bus meets with an accident and the people are injured where is the concept of contributory negligence. The question of it does not come and each claimant is entitled to the amount and where the contributory negligence theory comes where 2 vehicles are involved or where one is the pedestrian and the other one was the but that is not there so can you club it and give the same thing. In Karnataka HC has given the finding that the award is correct but the SC said consider the case individually and what is entitled to one other may not be entitled to so see this is where you have to be careful and of course rightly observed by our learned friend that the district judge may insist that you people are showing more number of disposal therefore don't do it but...

Sir we consolidated on the part of negligence but on the quantum of we give separate findings and we are doing it daily.

But what I am telling you that it didn't happen in Karnataka

Sir after this GMK Kerala Transportation every tribunal is following the guidelines how you have to dispose the injured person and how you have to dispose the widow and the child and this entire thing are followed by

What I am talking about Karnataka the matter is not of 10 years back it happened recently the judgment of SC is reported in 2014. As I told you that you have the vision of the power and try to discuss it and also just and reasonable compensation is one more thing so here you have asked for a particular amount no doubt I find that you are entitled to more but I cannot give don't do this thing what is just and reasonable is the most important thing and I think some of the judgments which I have got for reference to you is Division Controller v Karnataka Road Transportation Magadev Shetty Case Helen C Rubello v Maharashtra Corporation State of Haryana v Jasbir Kant. If you find that the person is entitled to more give him don't and secondly whether their heir came for claiming the compensation see the heir ship concept does not come here what is relevant is dependant of course when you look at the situation in Sarla Verma Case the brothers were denied the conception and certain guidelines were issued but later on Munjuri Behra Case the SC held in 2007 that actually merit system should be followed and find out that the brother or sister are dependent or not if the brother and sister are dependent on the deceased person or the victim they must get the compensation this is where you have to have pro- active views and not simply taking the precedent and give the compensation by saying that this case says it goes like this only.

Even if they are major are we supposed to give them

Yes

Sister doesn't matter major or not if she gets married we'll ignore her but in case if brother is major then

Yes he is entitled to it. Like in a given case let me

He is major and married also then what

Yeah still he is dependant and this is the most important thing. Let me take an example I have an elder brother and a younger brother he is mentally not right he is mentally not sound and physically disabled and I am taking care of him and you cannot say you are brother therefore you are not entitled to only mother is entitled to

Sir in such cases we can exercise our innovative

Yeah you have to be pro- active and this is what I am trying to say and thank you

Even though the person is major but his condition is like that he is depending on so in that case

Okay thank you very much friends and thank you Shruti for giving me an opportunity to share my thoughts

A short tea break I'll think 15 minutes 12:10.

SESSION 2: AN INSIGHT INTO THE INSURANCE SECTOR WITH RESPECT TO MOTOR ACCIDENT CLAIMS

Good Afternoon honorable Judiciary. I would like to thank NJA's Director Dr. Geeta Oberoi for inviting me for this interactive session with the judiciary on 'Insurer's Perspective in relation to Motor Accident Claims'. I would like to thank Shruti the coordinator for making this pioneering step and including above perspective as one of the session. The first time we have been attempting to interact with the judiciary to put up our points of views and in a positive way that can change lot of views and suggestions and thanks for that and we hope this will become continues interaction not only in Motor Accident cases but any other or almost everywhere insurance claims are adjudicated in the court of law from our technical aspects in a manner that the adjudication is just and fair and I should thank Sourav Sumanth and Abhishek of ICICI for quickly putting together all the points that I need to interact with you just to gave a background about myself as an individual my name is R. Chandrasekaran and I belong to Tamil Nadu state but in my early days I shifted to Mumbai after a few years stayed in a bank I moved on the General Insurance Corporation of India the holding company of four public sector company and then I continued for about 30 years rising in the rank and in the process picking up some international exposure in UK 4-5 years setting up the international business for the company and finally I also had a stay in the middle east and now in this position as Secretary General of the GIC counsel and this is my 5th year of continuation. In 2015 Act amendment they removed the perpetual succession part that made the representative body of all insurers transacting non- life and health insurance and re- insurance business in India so the role of the counsel and not only the representative body of the insurer in various forums like this the Act has given us the specific role that we have to play with regard to improving the policy holders and customer services but we cannot do it as individual company basis we have to do it as a industry. One of the first fundamental function is given is to give advice to the insurers who are members of the counsel on sound conduct and best practices to be adopted by them. We can find out from elsewhere the good things and come back and tell what is god for us or good for the customers. Similarly we have to be the eyes and ears of the regulators if the insurance companies are exceeding their expenses which are permitted under their regulations or if their regulators are acting in the prejudicial interest of the policy holders we are supposed to bring it to the notice of the regulators if anybody is acting against the interest of the policy holder

so indirectly we are eyes and ears of the regulators and we are also the guide friend for the industry to adopt sound conduct and best practices so this is the role in which I consider this interaction is also one of the key role in bringing all the stake holder concerned to appreciate each other's point of view all honorable judges would be knowing more about the special nature of the insurance of the contract and special features of the contract act and so on and so forth. I would like to point out that utmost good faith is the first point which is cast upon the insured because it is not that the insurer is at advantageous position with the insured even the insured is at advantageous position vis- a- vis the insurer. How The insurer is drafting the policy agree but the insured know the risk he knows the feature whether he has sub- standard factory building or he has a car which has problem with the break and he knows the risk better therefore both are not exactly equally placed both has got their position and therefore utmost good faith principle shall be followed. Many times we find that this particular role cast upon the insured or the insurance agents acting on the behalf of the insured is compromised and this point I just leave it there and I want to give perspective of the industry as we speak the insurance industry has done over 96000 of premium of which our most 50% not 50% not less than 50% have been contributed by the private companies and the remaining 50% a little more than 50% because there are government owned companies. In 2001 the industry had only 10000 crore and I was the part of the industry and we were really static and then we said 10000 crore today we should have 1 lakh crore in period of 15 years but it could not reached so 10000 branch officers and divisional officers 13 insurance companies issuing about 13 to 14 crores of insurance policies settling about 3 crores of insurance claims for all kind of insurances. The health sector is one which is really doing very good 24%- 25% growth on overall places and there are some companies which are doing 30%-40% growth only in health insurance business because although the income tax benefit was given in 2004 today people have realized the benefit of health insurance looking at neighbor calming and by the publicity of course health insurance is must before that this only motor was continued to be and even it continues to be now 45% of the portfolio we have got what we know as the comprehensive policy which includes own damage which is a voluntary part and the mode of 3rd party both of them are more or less contributing equally today. With the Insurance Act Amendment 2015 every insurance now is mandatory to do 3rd party insurance otherwise the Motor Vehicle Act had mandated the owners of the vehicle to have insurance. Therefore every insurance company cannot reject any single vehicle insurance when he comes to their office. We did have mode of pool and things like that but now everything is set to rest every company has to do quota equivalent to the business they are doing otherwise in 3rd party insurance nobody will deny insurance to any vehicle owner and most of them have put in an online portal where you can put in the data and it will give you the premium administrated by the IRDA and people can take insurance. So one the supply side constraint restrictions are gone so ideally today every vehicle is supposed to have insurance and he will be given insurance and therefore there cannot be a case for a vehicle running on the road with our insurance. So our insurance industry is first and foremost problem is the uninsured vehicle on the road uninsured vehicle on the road today just give the indication of numbers worth...road transport data. I am taking 2012 data because up to that only the data is available we have insurance data of

today but I will take the comparison of the 2012 data 2012 the total number of vehicle shown in March data shown is 15.94 crores vehicles. Vehicles registered two wheelers were 11.5 crores and passenger vehicle cars jeeps buses are 2.15 crores and commercial vehicles tai and other big truck and all those things 1.25 crores this is as per the 2012 March data correspondingly if that is the number of the vehicle in 2012 what are the number of policies for the respective categories. I have a data which says only 6.36 policies have been issued that means almost half of the vehicles do not have insurance.

Almost 60% vehicles.

Almost but again if you go to the two- wheeler category only 3.6 crore vehicles are insured and in the two- wheeler segment when 1st 2nd and 3rd year nobody buys the insurance in most of the cases then cars out of 2.15 crores only 1.9 is insured almost 80% passenger vehicles are insured and when it comes to commercial vehicle out 1.25 only 0.5. SO we have on one hand a fundamental point uninsured vehicle but when it comes to Motor Accident Tribunal I don't know my experience is very limited every policy is supposed to have a insurance policy attached to it every vehicle every accident has to have I am not sure you may be the better person to say unless if it isn't attached to the insurance policy why you pass an award against the insurance policy so we have one big fundamental point how do we tackle this menace of vehicle dropping out of insurance or if you want to look at it in a different manner whether uninsured accident are shown insured vehicle number it's possible I do not know I am just putting a thought in your mind that it could be reason there that every uninsured vehicle accident is coming there but the vehicle number that is shown or the insurance policy that is shown maybe of that of the vehicle which may not be involved in the accident.

Sir sorry to intervene with all due respect to all the judges one problem is that most of the people are illiterate.

Sir I faced one problem during my term that policy is one thing and the terms and conditions of some other policy were attached to it. I issued a contempt notice to the regional head of the insurance company but I have a small question to you what role the insurance company can play in this scenario because insurance company can play a vital role we are having this pedestrian week and we are having this police checking ad everything but there is no single awareness regarding the issuance of insurance policy or getting the insurance policy or evaluation of insurance money and time. No awareness from insurance companies if I am not wrong there are almost 40 insurance companies in India both private and government I may be wrong but

There are 30

This problem can be dealt by the regional head

Sir this is very nice idea and I'll try to see what I can do at my level but apart from that these kind of awareness have never been introduced by the though it is revenue gaining practice it's not loss

to the insurance company. Insurance company will gain because people will come and take the policies.

Sir we with all due respect I would like to say that all the insurance company but I can tell you from the ICICI perspective because I am working with them so every insurance company makes a point that they will be advertising about 3rd party insurance mandatory insurance through various mediums which can be electronic media or it can print media or it can be online portals and if I can talk about ICICI what we have done is that especially of the fact that which Sir has pointed out that out of the 11 crores two- wheelers which are registered in India only 3.0 odd numbers are insured so what we have done that we have set up some chaos point in each and every petrol pumps wherever the inflow of the customers are very high and what we do is that we go and tell them if your vehicle is not insured we can do a 3rd party mandatory insurance then and there for you. We have good response from that and all the insurance companies are following it and now we have come up with another product which is long term insurance for two wheeler in which we are providing 3 year comprehensive insurance to the two- wheeler so that

In new vehicle there is no problem when the insurance expiry dates come closer you call them and ask them to renew it so there is no problem for new vehicles but what about the old ones

No Sir for old vehicles also we are providing the long term 3 year policy and which has been well accepted by the customers also.

It is not done by all the insurance companies

Probably by not all the companies but once a product is launched in market and if it is viable and successful I am sure all the insurance companies will also follow. Sir why the insurance companies will refuse to accept premium revenue for them if the customers want to.

That's what my question; you are getting revenues you should have done. See as far as the Delhi is concerned Delhi Police is organizing all these things but there is no single state where the insurance company have come forward and say okay we will join you and you start a week for this insurance.

Sir renewal retention is one of the biggest concern in the entire industry and what we do is that whatever the regulator allows to follow with the customers we give them SMSs we give them reminder notices and even if then also the customer is not coming to us and giving us because Sir this is 2 way contract

It's may be true regarding the

Sir definitely takes your suggestion and definitely put it up

For illiterate people your SMS are nothing they will not read that

Sir for them there is print media and see

Sir I agree that we does not do a lot in so far as at least for mandatory insurances the people should be aware but here Sir `insurance companies have got only 10000 officers and vehicles are so many crores but they are on the road and on the road we have the police establishment that is RTO and they have every right under the Act to intercept a vehicle and ask for documents many times they ask for permit license but never they have asked for insurance documents so we personally felt that the role of insured who has definitely bind by the law insurer we have to all thing that we have to do but the enforcement organizations like police and RTOs we have to step up there they are definitely stopping but at that time are they looking into the insurance. I will give you number of points

See they are after money and if they will ask for insurance they will not get money see as far as police is concerned practically

If there is no accident they are not checking the insurance policy and not even if there is no accident.

Sir you have to coordinate with these agencies

We have started few things I'll give you what we have done

Monitoring things won't help

No I am not saying monitoring I am saying coordinating

What coordination we can get

Sir I'll tell you what we have done

We should start imposing fine on the state government you see you allow uninsured vehicle on the road so the government will pay. One of my colleagues did it.

Sir what point I would like to say Sir that we have set up a insurance information bureau in Hyderabad we all insurance company mandated to report every policy data electronically to that bureau and that bureau first thing that they have done is they have taken motor vehicle and they have developed applications which are in mobile and from internet also it can be used and it is called 'Vseva' V for vehicle there you login and put your registration number engine number and it will tell you which insurance company insured with if you are already insured and if you are not then it will say you are not insured now in the case of police we have this mobile application so if the police will use it and enter the number of the vehicle and he will know whether it is insured or not. Number 3 we also set whether the vehicle is stolen the stolen vehicle complain and ask for claim if Haryana vehicle is running in UP and UP police is picking up and the Haryana number is coming let me put it they will know it is stolen vehicle and they will immediately catch it. So `like that digital apps are started coming in fact insurance companies itself have QR code and Bar code it has been put on the mobile and if the police stops you for insurance policy using a scanner he

can straightway about the insurance and it is already been launched in Hyderabad. So all this will pick up everywhere so on the vehicle whether insured or not information to the enforcement agency we have made applications but 2 years back to the police academy and I addressed about 600 police officers and printed out only one thing that if you catch an uninsured vehicle the fine is 2000 Rs. 3 months imprisonment or both it is there in the Motor Vehicle Act so it will increase the income of the cheker and to that extent we told them anyway we have lot to do. I concede the point that insurer will have to but whether it is an income to the insurance company by going and taking an uninsured vehicle onboard and getting the insurance to them is it the income of the insurance company I have my doubt I'll give you the figures the last 10 years I have got the figures here premium is something which is collected during this year and the claim is that I have been paying this year or I have intimated but I will not pay so what we called incurred claim claim ka intimation aa gaya hai but it had not been paid because judicial things are not complete yet but we made a provision for this. So in 2006- 2007 the premium for the third party was Rs. 3300 crores and the claim was Rs. 4600 crores the claims are not counting the administrative expenses of the staff or the people who are operating the motor vehicle claim and all those things. The peer claim paid or claim payable for which we have made the provision in the books of account and in the year 2013 what we talked about number the premium is Rs. 15000 crores and the claims is Rs. 17465 crores so

But time by time you are incasing the premium also

This is a very interesting point of insurance Sir the premium is collected from 1st April to 31st March all the policies issued in whole year for all the vehicle but the claim during that year which is coming to us because after the due process of investigation judicial process and everything pertains to the previous years only 2% or 3% of the claim are reported in the same year I am talking about only 3rd party insurance accident happened in the same year claim reported in the same year and claim settled in the same year `only 2% remaining 98% of the payment happened for the claims which are happened for policies which have been issued previously and which has gone through the process of adjudication and finally when the award come the payment is made so we are looking at the financial year based premium collected this year claims paid or payable during this year so this portfolio is not making any money for the insurer even in other countries also there is gap it is not peculiar to India but then although we are increasing the premium still we are falling short by 4000- 5000 crores every year. What are the reasons for that

Due to the lack of advocates who are appearing for the insurance company this is the reason.

I think he is right

Even they failed to appear sometime

If some HC is giving future prospects okay you agree you give the future prospects you follow the Sarla Verma and put a reasonable offer the things will get settled here only at very moment but if it will take 3-4 years the interest part will be more than the amount 9% interest sometimes...

...

If I may add something here I know that lot of judges have this grievances that the insurance companies are not settling matters I am not against any insurance company but I would like to give some figures Sir in this financial year ICICI Lombard has close 24000 cases all across the country that has been closed through court awards and through settlements and I'll tell you the figures but maybe you would not believe it because the vibe which I am getting from the house but we have closed about 55% cases out of those 24000 cases through Lok Adalats. I can tell you one thing that there is a cultural difference between private sector company and public sector company.

It's true the procedure followed by both the sectors are totally different one is time consuming and another way we take it

I have one point here the perception the perception is something till the 2001 it was only government company holding company and four other insurance company which is basically government so many times what happen is there was a social obligation on the part of the government company also and the legislation was social legislation and they allowed the court award to come to pay. Why Because there is a no limit of liability is prescribed in the act I don't call it unlimited liability. I call it unspecified liability for the simple reason honorable judges like you would be the person to evaluate the each and every merit of each and every case facts before you what is presented by both the people and arrive at an award amount and also therefore the public sector culture is that they go by court award and pay. The Lok Adalat and this sort of forums came when the pendency of the court the cases of the insurance company waiting for the award waiting for the details of the investigation report from the police. Today we have 10 lakh cases pending every year there are 6 lakh cases coming in almost 5 lakh cases getting paid and 1 lakh getting added to the pending list so this is what I wanted to point out that the perception government companies are paying the settlement the public's perception is that the government has to pay for the road accident and insurance companies are the government so they have to pay but unfortunately the insurance system is collection of premium for all those three points it is public money but when it came to question of therefore the question of awards come we will pay all the awards that are coming in but if it is the government and therefore the person receiving the award the just compensation or something more that is hurting us and that is where the premium is going out because this portfolio is not making money at all so perception that who is paying the money the vehicle owners are paying the claims for the claims that happened during that year therefore the premium is going up but I really we collect the premium from you all the vehicle owners and we pay the claims of all the vehicle owners that come to us so one of the component is just compensation in time and to the right person and whether the right person is getting the structure compensation under 163 (a) or 166 or to the award system. Hit and run cases we do not know which vehicle it is but hit and run cases compensation are very low but how many hit and run cases come in as a regular case we do not know so there are areas where both the judicial system and the enforcement people like police and RTO and the insurance company have to put together so the system can work in robust manner so that we don't want to make money we want to break even

investment income is there when we keep the claims pending but the interest element is there so interest income or investment income by enlarge match therefore even the investment income does not but insurance business is like that sir you collect the premium today claim will come when we pay and the time lag is utilise to make some money out of the investment and the income under the premium is put together and is used as a claim and bear the expenses of the salary etc so our system is like that we collect public money pay public claim and in the process due to fluctuation of claim we make profit or we make loss but if we keep on making the losses in this area then we have to analyze the losses and why it is this is the only point I want to make when I started with the uninsured vehicle uninsured vehicle when it comes in it is good but it also brings in the potential liability of a claim.

But for uninsured vehicle we are not fasting their liability on insurance company.

No Sir the point is that if data says that 60% vehicles are uninsured but the cases which come to your honorable courts you will find out that 99% of the vehicles are insured. How is it possible in a country like India where 60% are being uninsured but the claims coming out of the accidents are all insured vehicles. The investigator are handicapped to certain extent because there is delay in intimation the accident take place in 2012 and as you all know there is no limitation in Motor Vehicle Act so the case may be filed in 2015 also.

Average time lag is from the date of the accident to the...

So let us any the average that of filing of the case is approximately in our companies `is 15 months so by the time the case is filed and we received that a case is filed at the ICICI Lombard the accident is taken place 15 months back so whatever your question your point that the investigators are not investigating properly. Sir he is a agency who is not supported by law so by the time he gets in the field to investigate the matter whatever investigation has to be done by the government agencies by police has already been concluded so he being a private agency cannot go and investigate the matter with the authority the way police do it.

No sorry I disagree with you see now the time is of RTI and you can file RTI and you can take any document

It's not about getting the document Sir. There are 2-3 areas which is causing problem to us and we feel it is a problem it may not be the problem from the judiciary side but when we have to pay the money it hurts us so

If you make regular visit by all your official then you can easily understand the work of the advocate his absence and the

We are definitely not blaming any system we are feeling that in the large country like ours with all the stake holders placed with various systems there are inefficiencies and miscommunication and gaps are there we are trying to just highlight it to you so that in what way we can improve ourselves

and take the suggestion and go. There are 2-3 other areas which are posing the problem of just compensation in time to the right person duty to pay compensation is on the person causing the accident the right to receive the compensation is on the victim that's all known but we find that the insurance companies which are not involved in the accident are the victim and sitting outside have no way to get the proof of the accident especially in injury cases after 7 years of intimation the data which we have collected shows that the policy issued today only as a 22% get intimated and paid but intimation itself consistently...within 12 months 13% of the intimation come within 24 months 66% intimation come which in 7 years almost all the claims on the policy issued 7 year before intimation has come to the insurance company but settlement it takes the judicial process and it takes another 4-5 years so this is long tail business and today after how many years how many claims will land on my table for payment so this is the characteristic of this legal liability with cases all over. Therefore the defenses that are available to the insurance companies is not somewhere got in the legislative correction or legislative amendment in 1988 got missed. 1939 Act Section 96 provided what are the defenses available the same got reproduced in 140 in the numbering of that A B C somewhere the relevant correction to the section did not take place and maybe it is legislative error or typographic error or whatever error we call it from 1998 onwards the genuine defenses are not available and even it is not available the pay and recover. You must be aware of the pay and recover so we pay and recover from whom who is responsible that itself is costing and mostly 1000s crores of money. Let us look who has to pay later so this defenses whether they are valid insurance policy is being agreed everywhere but other than that valid driving license or whether alcohol driving or you mentioned whatever defenses mentioned over there none of the defenses we are in position to prove for example small injury case after 5 years where is the injury mark where is to prove where are the papers which hospital did he go so we have a problem of this small injury cases and the defenses and literally we don't have.

Sir in 2010 I was posted in Bhopal and a judgment was passed by the SC the private insurance companies were requested to pass on the order of that particular judgment to the Home Ministry and since Bhopal being the capital of MP I myself handed it over to the department I have never seen the compliance by the police officers of 158 (6) anywhere in state which I was taking care of so we are fighting with the mechanism here

Sir I'll give the answer to that Daya Prakash case and Gopal Subramanaim was appointed as and he gave various recommendations and things and I have those things with me we agree with all those points in fact this case is coming up in this month only in SC and we are appearing.

Sir one of the major drawback of insurance company is taking false defense you know that so you should not give false defense if the person is under the influence of alcohol our SC and HC says this is not defense we have to prove by taking blood sample the lawyers but still want to continue for his fees.

Sir Justice Katju gave a very wonderful judgment and in a case where there is no liability can SC create a liability on insurance company this is the question of law decided by the higher bench but

what happens in every case 6- 7 lakh is the amount so the judges I agree the victim has to get the money and therefore the question is pay the money first so like that 6 lakh 6 lakh they have to pay more than 3 thousand crore.

Sir day before yesterday I passed an award of 2 crores 38 lakh Rs to a NRI person and the insurance company was United Insurance Company that judgment may be reported very soon in the newspaper also because this is the highest amount that any court has awarded and the case was from the year 2006 and today we are in 2016.

That's very nice and next year that person will gift you car. But in a light manner I am saying but then whether he should get that amount I am not questioning that it's ok but then the point is we do not have... to defend. This is the point I am throwing for discussion Sir whether small injury cases should be taken out of the purview of the tribunal and only if there is a big dispute then only they should come to the court it otherwise they should settle it between the insurance companies. I don't whether it will help because 5 lakh cases of injuries ...

Sir this is only has been already started by the ministry of finance. They are referring to this thing they issue notice to the claimant claimant is going and again coming to the court that look we have settled

You are talking about ombudsman Sir

Pre- litigative sort of thing

A serious number of cases can be disposed by this method on the first day itself we are entrusted we can tell make it little less. Insurance company says we will give 2 lakh but claimant is asking for 4 lakh so we can make him understand that it is better to take 2 lakh right now instead of waiting for another 4 years for more money but insurance company hardly come forward.

If I say something you will feel I totally understand and I have seen this.

Sir as far as this concept of I will tell you the true story the insurance companies are not filing the case after making payment to the concerned party they wait for 2 years and they allow the person to leave this country or leave the state and then keep on

Sir please doesn't take it as I am pointing the finger at anybody this is a problem which is I am stating and how to overcome with it

The points which you are mentioning out here in the open house are the points which we also face see one thing has to be appreciated I believe is the right word in saying that because Sir you mentioned that you belong from Bombay and whenever we see court's website Sir for the taking out the dates and updates and all I always in variable see that the case has been filed in 2008 and till the application evidence it is running and it is 2014 now can it not happen Sir that the delay of

getting the evidence from the claimants is also deliberate attempt by the claimant advocate so we increase the interest.

See being a judge we will do justice what we are doing is the that we are stopping the interest

Exactly Sir we are getting you we are getting those orders but Sir

One point I want to point out that 2 years ago we started a pilot project in the counsel we collected our own money and then we bought 5 ambulances and 5 police vehicles speed guns laser guns alcohol breathalyzer within 200 km of Hyderabad and Vijaybada Highway we deployed the 5 ambulances ambulances were fabricated to accommodate 2 stretchers automatically instead of normally ambulances are having 1 auto loader but this we time fabricated because high way accident more than 2 victims happen and at least 2 people can be save so 5 ambulances ran for 2 years even now they are running but now we are not funding them police we recruited were retired police officers or special police officers and along with that one regular police officer in the 5 vehicles we paid the salary and other expenses etc gave them breathalyzers and link it up with the mobile application to the call centre and the accident vehicle report will be picked up. We have found out that certain learnings are taken one is leave the city stretch I am aware the alcohol shops are there and that is exactly the reason where all the accident take place and we found out that how to measure that so we are learning in the process and we put it to the authorities but the fact is we are trying to find out the cost of the accidents. For example if service road isn't there and the local traffic and the highway traffic is mixing in that particular stretch every accident take place there so we also in our own way are trying to see whether the accident can be reduced so my purpose of telling that is that insurance company is willing to take all the steps to see how what are the root cause that we can address and the finally one the fourth point which is now becoming very important is the extent of claims which are not actual claims. I am happy to know that Lucknow Special Investigation team has started working on the particular known as the compensation between the employers and employees The Workmen Compensation Act for the drivers versus 3rd party compensation under the Motor Vehicle Act so Sourav do want to say something.

I would like to say that Mr. Chandrasekaran we got the copy of the order of the Lucknow HC I will just example of how this particular industry functions and what pain it causes to the insurance company a person is shown to be a driven and who was actual driver and his leg was amputated in an accident he claimed under the Workmen Compensation Act from ICICI Lombard and we had paid 12-13 lakh to him in 2011. Its recorded judgment the same person is shown to be a driver in a Motor Vehicle accident after 3 years in 2014 against us only. How can a person drive a vehicle if he has taken a compensation alleging that his leg was amputated this is only one fraud. This was brought of the notice of the HC of Lucknow and HC ordered a special investigation team known as SIT who is investigating the entire racket in UP so this fraud with respect to you can say exaggerated medical bills the point which Sir raised in earlier session with respect to that there was uninsured vehicle and later on an insured vehicle has been implanted these matters will take some time for us to whether we should really go and settle these cases or not the judiciary in UP

has been very supportive SIT has already started lodging FIRs against the advocates police officials who so ever involved in fraud and you will appreciate Sir that this particular fraternity which deals with MCD cases I am also a lawyer so I should not because I also belong to same fraternity so this particular segment who deals with motor vehicle accident claims is called as you all know so this entire industry Sir I have done my groundwork while handling these cases the moment a patient is taken to the hospital here the victim of accident is the patient and it is written on his prescription RTA and the family members of him will ho and collect the dressing material from the medical shop that particular person will note down that particular prescription and will give a call to the advocate immediately that there is a patient of road accident come and collect your Vakalatnama bring your Vakalatnama and get it done even the official staff is doing. So these are simply challenges Sir which restrain ourselves in going out and settling the matters because some document will give us point of contents and I am totally in sync with you Sir when you said that alcohol wale pe toh contest nhi hona chaiye Sir I totally buy that point but if there is a point where I can reduce or stretch the compensation because he pointed out that the compensation must be just and reasonable it should not be bonanza. Sir now tell you about a fraud that if I stick a wire here with a cello tape then when it will get x- ray it will look like a hairline fracture in the report.

But doctors cannot do it no private doctors

It will be related to the MLC in government hospitals they will check the injuries initial stage mai kya bata raha hai right hand mai ya left hand mai

Sir we have started on what is known as setting a proper fraud investigation bureau before that in UK insurance association was having it. Now we are trying to do whether similar exercise can be done here which will take fraud cases to prosecution before that we are collecting all fraudulent cases and all suspected fraudulent cases in the form of databases collecting it and putting it for the insurance companies to look at that before they have done fraud elsewhere in a bank or anywhere so we trying to link the bank data to see whether fraud is something which is in a financial sector without collision it cannot happen but in insurance industry every fraudulent claim insured 3rd parties like advocates doctors or garage owners etc so the fraud is very peculiar that the 3rd party is also involved in the fraud and how do I go and say he is a fraudster and deny a livelihood to him without doing proper investigation and giving him any opportunity to explain therefore we have little set- up for how it should be done. Just to conclude we have 4 areas where we are trying to solve it one is the uninsured vehicle the other is how to reduce and ensure that the defenses are open and the timely settlement three is premium claim imbalance and the last one is the fraud areas so in all these areas we are trying to put some things and now I would request all of you to respond note down all the suggestion so that we can improve and implement it.

Participant; Sir as far s fraud is concerned we all are very vigilant in my court I found that a doctor has advised 60 tablets a day no doubt if we advice 60 tablets a day I know it's a fraud thing.

I told him I'll put behind the bar and settle it he was asking 1lakh money and the moment I said I'll put you behind the bar the case was settled and I threatened the lawyer also and he immediately settled for Rs. 25000only and he had two fractures. See we all are vigilant regarding this.

You should verify the evidence through separate independent agency investigator you should get those verified.

If I send a investigator to certify a bill he will certainly verify the bill because that medical store guy must have taken 10% or 20% whatever amount so this is the problem Sir.

Sir they are smart enough to prepare the bills which are in sync with the prescription.

Sir there was a case where this person was consuming the same medicines that were prescribed to him 5 years ago. I asked him are you mad this is not the antibiotic or vitamin tablets that you can have without thinking of the consequences.

Sir the thing is that how deterrence is going to happen I am with you on this point Sir. My only..

...

Ma'am we are teaching our advocates and I know for the fact that our advocates also come for the stake Sir they are also human they aren't superman they commit mistakes too. We are teaching them we are teaching them medical jurisprudence. There is a session for disability for you also. I am telling you Ma'am after spending so much time in Insurance Industry none of the doctors when I have been in the court for cross examination they don't know how the disability has to be calculated the person who issued it they don't manual of it they don't know which method is applicable but the issues 70% 80% disability and I have witnessed the way disability certificate is issued. Ma'am disability certificate is issued by charging X amount by a doctor.

They...

Sir this method is European method which has been adopted by Union of India medical council follows that

How many cases you have found like this how many

Sir the problem is the disability why we are reluctant in settling the cases

I am asking you how many cases

Sir I have settled an injury case of 70 lakhs settled not by court because the injury was such

You have saved the interest

Absolutely Sir I have save the interest but then I am saying where there is genuine injury

Not sufficient see IRDA puts up the chart of what is the premium that is chargeable as per the actual experience and when actually they give they give only 30% of that I calculated in last 3 years whatever the IRDA put up as a hat they have increased and the actually the amount that they have given to the industry there is 7900 crores based on data only. I am not going beyond what IRDA has put up on the reason is they are saying is that it will create strike riot and people will go on all that and they do that so more of I will not say political. Private sector and public sector both are involved but the ultimate sufferer is the actual policy holder whose premium is going up even in health it is happening therefore unless we plug all these inefficiency as loophole it is going to be very difficult. The last point is road transport road safety and transport bill which is coming up. All of you now Sir it is defining the road accident victim and not as 3rd party in the sense when the passenger are in a car or is also in a contractual carriage but still he is a going become eligible for compensation under 3rd party mandated law so of course limitation liability they have put has one of the point so we are trying to say that bring compulsory auto liability with a limit and provide a voluntary auto liability for somebody who wants to take a higher liability cover and there can be two policies one policy for mandated by law and the one...we have put lot of suggestion to them how much will come through we don't know and we hope things will improve with the digitalization linking of data and Google earth has agreed to give 20 data fields to map it with insurance policy to check whether the vehicles are insured or not. They agreed to give that so that impair all data will come and insurance will be mapped and we will be able to find out who is insured and we will ask the insurance company to chase them and see all the vehicles can be insured. Like that we are trying to do technological help to bridge a gap that's all I want to say Sir but anything you want to convey I'll listen

One point that I wanted to know is that you directly pointed out that the disability certificates are may not be correctly issued so in that case I think there is permission for cross- examination if there is fraud and all these things are happening in MNCT cases so it can be checked but the problem is nexus the nexus between the claimant and the lawyer of the insurance company so many fraud documents are produced before the court they agree if you know that the settled position of law is that admission requires no proof. If the lawyer of the insurance company says that yes there is no objection it may be exhibited the Tribunal has no interest to not to exhibit. If the insurance company lawyers raise any objection then only Tribunal will go into proper inquiry. So what I want to say that the nexus between these two parties should be strong you see if the amount is higher like this the insurance company is to take the liability being the member of the Tribunal I have no interest who suffers or not but the thing is if somebody makes fraud and gets amount from the Tribunal in general people will lose faith in judiciary. It will send a bad message to the society that yes by committing fraud we can earn this amount so what is important in Tripura what I found that the claimant petitioner suffered stroke and he went to Kolkata and collected some prescription. All these things are produced before the Tribunal and while checking before the judgment I found all these things so my question is what was the lawyer of the company was doing at that time so the nexus it is my suggestion that the nexus otherwise you see everybody is a part

of a corrupted society investigation there will be corruption in investigation and everywhere so we cannot come out from that problem unless

Ma'am we try to be vigilant as far as possible with respect to how to curb these advocates I am sure that there will be few advocates who will be joining hands with the claimant's advocates. At times it becomes very difficult for us to catch them. I have also heard the stories that my advocates delay the depositor's payment of the final award because they have some vested interest from the other side in it so we have very vigilant with respect to how we choose we share the industry data. Your point is very valid Ma'am.

The problem is we have to choose from small location we have to choose from that stock only. There are community of advocate available at BAR I have to choose one from them only so we cannot get somebody from other location.

Agreed apart from this we cannot stop all these things completely it will be an endless job if we start discussing all these malpractices it will continue for even we will miss our lunch but what I mean to say that when the disability the SC says ki you examine the doctor and he will tell you how much is the functional disability. The doctor comes to the court and he says as per our Ministry of Social Development guidelines we cannot tell how much problem he will be facing what is it's functional disability and 2- 3 questions the claimant's counsel ask see the court has to decide now how much percentage and if what I am doing that I am consulting both the parties the claimant's counsel also and the insurance company's counsel also if he says that the 50% because I don't want an appeal in the HC I want the matter get settled there only through award so I am asking both the parties. Here the court is also helpless but can you say something what should be the role of insurance

Sir I'll tell you that the point raised here is that the insurance company they don't come up for settlements I'll share an example with you this is the way the compensation have to be arrived at now for example me being employee of ICICI Lombard and my thumb is amputated being in an accident and my thumb is also amputated left or right whatever it may be and M.F Hussain also loses his right thumb for him it is 100% disability because he will not be able to hold the brush were as this amputation though it is permanent disability to me as an individual but does not have 0% impact on my functional capacity but when such type of cases come to us by the claimant's advocate they don't agree. They feel it is their right d they have disability certificate they will be able to extract a very high amount from the tribunal because we are offering a very less amount that is why also lots of case also don't get settled.

But in my court number of courts is settled doctor is there

What is the botheration is the delay in the claim and also the disputes disputes is not something which we can single handed do but there are ten lakh claims pending of which I find it that 80% are more than one year any times what happen when the claims are pending more than 1 year become 2 3 or 5 and more so there is a tendency to drive on 80% of the cases of course I conceived

the part from the advocate point of view from the other angles I don't know what should we do about reducing the pungenencies of the cases in our books Lok Adalats is happening but still we don't have control over it.

What maximum you can do is that you can lead your evidence to an interest portion

Can I ask you something pleas guide me if this is possible see I am ready to follow this in my state for example let's say the claimant has filed a case and he is taking time in getting his evidence and record can I lead my evidence before his evidence if that can be allowed our case will stand there then itself then the whatever delay is that is on the part of the claimant if that support can be given to us I'll be...because that was my question CPC is not applicable as it is summary inquiry.

...

I'll tell you why one percent of household is only insured in India 99% is not insured in Chennai all the shops and all the people who have the ground floor they all have taken fire insurance policy and everybody has excluded earthquake and STFI because premium will come down so if you don't take STFI that claim is not payable same here if the fellow is not drunken driving and any other defense then it will not be payable but here we have a law adjudication taking place there we straightaway we say no arbitration they come so insurance industry have been fluctuating growing within okay by 10% growth the probability come down as the Lomabard goes up probability comes down but it rarely happens so all over the world we have mechanism called 'Re-insurance' so we can pass on our in a portfolio basis to re-insurer therefore that cushion is available international insurance re-insurance when they come but in the motor it is not available because in motor nobody re-insured small 5 lakhs worth of car therefore the claim is not there I will keep the money so in motor there is no re-insurance. In fire big industries have it overall insurance industry is making bigger profit racing out the time lag between the premium collections. One of the reason we say delay delay the motor accident claims also so the interest

The problem is in insurance of motor vehicle going up but not sufficient and accidents are also going up

One letter which I wrote to IRDA now the last week they increased the premium but they did not increase the premium for commercial vehicle it's our problem also. Private cars up to 1500 cc they increased a little bit original basic existing premium is 4920 and per passenger you got another 1000 Rs. so 5920 based on the claim it should be 9000 because lot of claims are there and what was given is 6400 so there is a gap of 3600 on an average basis see the vehicles which are 7.5 tons the lorries they are supposed to be 28000 should be the premium as per the data but record only 13000 so 15000 Rs. average claim is not coming so these are adding up to the losses in the premium is not adequate the claims are there I would not blame anybody for giving an award so that's what we told the ministry you put whatever limit you want fair but adequate premium is there no problem adequate does not mean exactly equal you know some income will add so premium should be equal to claim on a mandated cover we want only even we don't want anything other than that

so the principle of insurance law of large number expected claim does not happen otherwise we will not be able to make money

Sir ki bhi business loss mai itne time tak nhi chalayega

Aapko itna invest karke itni si bacchat ho rhi hai the data that you have given that means for so long you were running

When you sell the old gold like shares that you purchased 30 years ago today its value will be more there is profit on sale of shares they all come into the books and they are making money but one good point about insurance industry is all valuation of the asset are the cost value in the balance sheet so we can't value the market value that is the concept and liability valuation is very high so on the liability side it is very high provision on the asset side value which is lower so the balance sheet has got inherent strength to bear some shocks but not every year but

For one year the cost of insurance for two- wheelers has been increased by 45%

Correct but whereas in the case of trucks in last 3 years there has not been any increase

And if you see Sir the uninsured percentage of vehicles is more than 2 wheeler so the difference the amount the percentage I guess is 35% but most of them are uninsured

We have lunch and after that there is session of library reading for 45 minutes and library is on that corner.

SESSION 4 – PERSPECTIVES ON THE MOTOR VEHICLES ACT

Namaskar to all of you. I'm coming straight from the airport. And first, I see one or two familiar faces. How many I am having the privilege to address for a repeat occasion? How many? Two, three and that's all. It means I have been lagging behind. Okay. Apart from the three, the others, I'll make a small introduction of what my own self. You have an idea, or do I need to give it? You have an idea of my background, or do I need to give it? All right. I'll do so. I had a long practice as a successful busy practice till about 17 years back. I told myself I have earned enough. Now I must use my intellect, my time and my money to remove the want of justice in this country, and for the last 17 years, I have been doing ground-level research. My research is not going to the library and looking for articles written by somebody. My research has been going incognito talking to people, finding out what are the real problems, what is the actual ground reality vis-a-vis what comes to the notice of the higher courts, because so many times there are difficulties, which exist on the ground, but the courts are not aware of what's going on. No judgement, nothing. The same applies with our laws, substantive and procedural quality. I am always happy, I would say, doubly happy, to address judicial officers? Why? A, we are a population of 1.3 billion in the country, but the Lord Almighty has destined rather deputed and conferred the task of justice delivery only upon 17,000 of you judicial officers. That means you've all heard the common slogan that in the hands of God we get justice. When we get it, we get it. Today justice will be given by you. So you as

judicial officers have that extra responsibility of giving justice to the society, and to be of assistance to you as a resource person is a double joy for me. That is why I am here. Okay. Now, there are certain parts, and most of it is based on my research, and since we're going to miss Justice Midha, I have to take the extra load of this session, and I'll also take the two sessions tomorrow morning because at one lunchtime I go back to Delhi. I have to go day after to Bangladesh. They have asked me to advise them on road safety laws, legislation, so I'm going there, but I'll try and see the maximum I can do in these three sessions. MACT's task, true, is compensation. That is the task, but that task has within it an element of judicial adjudication because compensation is something that has to be assessed and then given. It is not that anybody who comes take on then one day the state coffers of the insurance covers are depleted, and there is no, nothing left to give. There have been number of cases of misuse of claims. You must have come across in your courts. And there have been number of denials, number of malpractices, et cetera. Things were in a bad shape in this field of jurisprudence when I would say, 2009, Justice JR Midha who would have been here today with us, he took upon himself the task of streamlining this part of the jurisdiction. Well, I assisted the court as amicus in that matter. Some -- several matters in that. Ultimately we have that agreed claims procedure in Delhi. Other states are yet to replicate it, and the purpose of the National Judicial Academy is we have an all India representation. Somebody is here from state what A, the other learn, and yet others also learn. Ideas meet. They develop. That is the real purpose of this National Judicial Academy. Now the object of compensation is one, but there are two more objects, which I must frankly say, are not subject of the refresher course as has been put down today, but I will address on them also, but in a short span only. The seriousness of road crashes everybody knows. Anywhere I go, I'm talking inside the country, outside the country. If there is one hour talk, 55 minutes is oh, it is so bad. It is so serious. What is the solution? Only five minutes. Those five minutes also I find at certain places are taken away in something that is really not a solution. Like other day in one south-eastern Asian country, I will prefer not to name, there was a long lecture on airbags. Anyway, when my turn came, I said, I will beg to differ with the earlier speakers, because in your country with the state of economic development, how many cars can afford airbags unless you are talking of airbags for the cyclists around their body, which is not practical? If you are talking of child restraint, I said, we are not having multinationals trying to market goods. We are needing solutions, and I said, let us also take it. Even in your country, I told them, there are a few people who have fancy cars, very, very few, much less than in India. They can have airbags. But let us take the fundamentals of human psychology. If I'm driving a car which is a normal car, my mind will limit the speed to 100, but if I am airbag protected, I'll say okay, press on the gas. Let me go 140. I'm safe, but are the other road users, the cyclists, the pedestrians, the other small cars, are they safe or they are worse off. So the net result was in that particular state of economy of that country, the airbags, I may be wrong, but that was my rough and ready assessment at that time, would really make more accidents, except that fewer fancy motorists will die, but many more, very many more vulnerable road users will die. So that is just a off the cuff illustration of how sometimes not so accurate can be our approach. Coming back that it is serious needs no discussion. I'll use the word, that was what we do in civil law, admitted fact, but there is one related part, which is not appreciated, and that is its effect on the economy. The quantum of road crash deaths and injuries we have are putting a drag of something like 1.5 to 2% annual in our GDP growth. Now that is a serious issue, but does not find -- it find some, but not much mention. In any case, there cannot be a doubt that to prevent is the first part. The second part after prevent, you all have an idea of the annual injuries in India. How many annual deaths? Come sir, collate that one sheet, A4. Can you take out that triangle A4 and one more was sent in Delhi?

This one. This one. Can I have one for this lady also Now on the top we have 1,40,000 deaths in a year. That is in India, and we have injuries. Our statistics only record serious injuries. They don't record minor injuries, and the incidence of injury, if we were to include minor injury is 20 lakhs a year in our country. Let us forget our court rules. Let us go on the roadside, well, as we do in normal life. How many times you've seen injury? I'd say okay, let's use your legs and move forward. It doesn't get counted. The actual instance is 20 lakh injuries. Below that are accidents or crashes, which have only property damage, no human injury. That is next. And the incidence of that is as high as 140 lakhs annually. There is one more concept I found in my research on road safety, and that is the near miss. Of course, driving myself from childhood, I had been through myself very many near misses, and I'm sure those of you who drive, and all of you otherwise who ride otherwise have gone through a near miss. A near miss is a precursor of a serious injury. It's a matter of few centimetres or a few seconds, and near miss is an ideal learning tool of why, why it occurred, what I call the root cause analysis. Yet we don't recognise it. We don't learn from it in our country. We don't penalize it. The only penalize, somebody has dead, all right. Police comes makes out a case, criminal case, claim. But if it's a near miss, there is no recognition in our system. So this is just thoughts, which you as responsible judicial officers who are going to contribute to this nation, if you develop this further, we are going to have the safest of our roads in our country, and below the near miss is a behaviour, which is improper at risk behaviour or a hazard. Again, no system of checking, noticing or controlling. Yes, jumped the red light, did over speed, did wrong parking, yes, we have that type of traffic offences, but that is not all. That's a very small part. There is much more to traffic regulation, traffic control so as to reduce the improper or risky behaviour. In fact, in Delhi, I've been noticing in front of my – I live on a main road, and in front of my house, I have been noticing a big increase over the last two years, the stunt motorcyclists right in front of my house. It's a risky behaviour. Ultimately, they may be skilled motorcyclists, but they should go to some -- they should ask the government to give a special field where they can do that, their riding, and not disturb it in elsewhere. Many times they cause other accidents. They get away. Others are injured. They just move away. I was once in Bangladesh. I was shocked to hear from their Transport Ministry that was there in the session that 42% are hit and run cases in the country, Bangladesh, and I just told them, and of course, I had to tell them later, not during the session, that 42% hit and run, and I want to tell you gentlemen about this. If 42% hit and run is there, that only speaks of what the person who was actually it perceives the power of the law to be because the basic human psychology goes in all our functioning. If I know the law will catch on me, I will stop, and if that I know that I can tell the law, catch me if you can, even the human in me speed off, that is human psychology, 42% there in that country. I do not know exactly how much it is in India. Yet if we have to have justice, justice to whom, the first justice is to the potential victim of tomorrow. He is the first justice seeker. Of course, not in your court. He is in the complete, I would call it a court, which extends on every road in the country, the potential victim of tomorrow, justice for him. Second after prevention, it has too many aspects. I will not go into detail. I'm just introducing it, because I'll confine to the topic. Second after prevention is attention. When I say attention, I take that injury, which has occurred. Now injury has taken place. If we give proper attention, that person can be saved, and he can start resume work a few weeks or days or weeks or months later, but if we don't give attention, what happens? Leads to death. It is of this 140,000 annual deaths, the top part, it is my research that at least 40,000 of them could be prevented if there was proper attention in time. Attention has very many aspects. I have attended to, you see I did a research work, which was released in 19 – two years back, about a year and a half back, and portions of this I had requested

the Academy. I had mailed them the whole book, and they have given the whole book to you on the CD. When you go back to your respective states, you can access it. It has everything there.

Topic 9 of this I have attended to, what can be systems for attention, and it is my belief that if those systems are put in place, and when I talk of systems, there are two parts. One lecture I was attending. Yes, this ambulance, heli-ambulance, that thing, this doctor on board. I said, can we afford in our country? It's very easy to say do this also, do that also, do this also. But what is there in our pocket as a nation? What can we do? Should we look at that or no So some of my thoughts on how we can do with our existing finances, I have placed here for attention. Before attention, and I'll come back to the first part prevention. It is human behaviour. Whose behaviour? The driver. We blame the driver only. We never blame anybody else, but the behaviour is of the driver, of the road engineer, of the road manager, of the body which is supposed to maintain the road, of the cyclist, of the pedestrian, of the parents who allow their children to stray on the road and not bother, or like one person who was telling me, the parents slapped a child, and what did the child do? Run to the court, on to the road, and with what breaking the car was able to stop, and make it only a very minor injury, not a death. Now is the driver to be blamed by the police or is the parent of that child? But that is our current ground reality and the law. The other part, the psychology part, you see, like as judicial officers, you have tried, or tried murder cases, or taken cognizance off at the rival of murder cases. Now if there are 100 murders, 98 of them are intentional. 98 of them are intentional. One may be a graven sudden provocation, self-defence something or other factor, but 99, 98 are intentional. The person had an intention for A reason, B reason, or C reason is not the issue here. And in the few minutes before he carried out the murder, he was calculating in his mind, what his desire was, the intention, and what he felt of the police and the courts? That is the thought process, the cost benefit ratio calculation. But when it comes to road accidents, road crashes, if there are 100 people who are killed on the road, or I will say 100 will be not right number. Let me use the number 1,000, or even 10,000. Only one is intentional murder. Yes. Out of that many, 10% maybe gross negligence. Others may be negligence, and others may be not even negligence. Yet it is an offence. Why does it occur

Now this is a psychological part. All of us, before taking any step, assess the degree of risk that step action or omission entails. Human nature, doesn't need much education. That is basic intellect, or at one place I was – I'll give the illustration. Of course, it is a too simple illustration to give for learned people like you. You will find never a case reported in a hospital of somebody picking up burning charcoal. Why? Even the simpleton knows that if I pick it up, I will burn my hand. The risk perception is correct. But when it comes to roads and driving, whether I am driving, or I am a pedestrian running across the road, the risk perception is oftentimes a difference of 100, 100 between the actual risk probability and the perceived risk probability. If I, whether I am driving a normal car, a fancy car, or a motorbike, or a simple Scooty, whatever are walking I assess. If I do, what is the risk?

Now this is where all road users in our country have a problem. They say, there is no risk, but there is a risk. They can't see that risk. They can't perceive that risk, which I have analysed in this work as the difference between the actual risk and the perceived risk. If this could be attended to and minimise the gap, it will never be zero. But if this could be attended to and minimised, you'll see. So therefore, our interest is first prevention, second attention and third is where we can't prevent, we can't attend, or despite attention, person doesn't survive or still remains injured, we have to compensate. So this little background I gave with the object. Now, if you have the lower pyramid, you'll find a difference that how proper laws, rules, systems can reduce the incidence of improper behaviour, and if there is improper behaviour reduction, correspondingly, the very improper behaviour, the near miss reduces. With that the

number of no injury reduces, the injury reduces and the number of death reduces. To achieve a 80% reduction is not a difficult task, but then it needs effort all around, and if we are able to achieve this, the reduced incidence is that not giving justice to the people, or let me ask one. Let us take a hypothetical person, and in our mind for discussion purposes, we take him as a potential victim. We ask him what do you want? You want to live long or you want compensation for your family? The answer is too simple. Of course, I want to live long, and it will be-- Now I had during the course of my research, somebody asked me one day at the Delhi High Court corridors the question. I was aghast. The question was whether it was and he looked serious. The person we all hear about suicide before Delhi Metro trains even today in the morning, I was reading about one when I picked up the papers. You see if I commit suicide before a fancy car, will I get more compensation? That is the dark side of law, the dark side of public perception, cannot be so, but it is there. It's a ground reality. Yet by these few aberrations does not mean that we do not take law in that perspective, and we have to give proper compensation. Give me. I need money. Please Give me. I need money. Yes. Now task of MACTs in the country, I remember before 80, before in the 50s and 60s, it used to be a civil suit for recovery in the civil court. Then the law was amended, and ultimately, in '88 came the new Motor Vehicles Act that earlier also the MACT had been provided, not the civil suit. Then came the MACT with the '88 Act, which on a token court fees provided for compensation, but as you know, from all your respective states, what has been the state of affairs with regard to the time taken in terms of years, the cost to the state of operating the courts for MACTs for all those years, the cost to the party, how much of what he ultimately gets is sliced away by those who are supposed to have helped him get that, and how much does he take home

And lastly, if I am injured today, I need the balm. I need the healing today. I don't need it when my children have been thrown out of the school for want of free. They are sick for want of food and clothing. The house has been sold away. That is no compensation coming years later. Compensation means compensate quick, and that is what the purpose of MACT is. But then the question is, there are civil suits for recovery of money very, very types. They have been pending before courts, and I am sure you all have also presided over courts and decided those suits, but somehow the other our 1908 CPC culture has been so ingrained in us, and when I say us, I must tell something very interesting. Very many times during interaction at sessions, I find there is a practice that what was the practice in 1890 came as a generational learning to the lawyers who started in say in the year 1910. The next generation 20 years later learned the same. The next generation still learned the same. And that effect of 1908 CPC seems to have had too long lasting influence on our MACT procedures at least. That needs to be kept apart. There is an element of a judicial adjudication, but let us keep the CPC apart so that we can decide quickly what is the compensation. I now begin the second part having given this introduction. The second part is about judicial adjudication generally. What I am now going to address in the next 30 minutes has nothing to do with MACT as such directly, and it will be of assistance to you I feel whether you are in a civil court, we are presiding over a criminal court, or you are having any other Tribunal or any subject. These are certain fundamentals and principles of judicial adjudication, which I thought I'll share with you what has been my ground level study and learning. To do that, first, can I have those pages, 62 pages which were circulated today? Now civil, these pages were circulated. Have my friends been able to turn over these yesterday Yes. Okay. Now if they have been able to turnover these, that can give you a fair idea, and I can then speed up. If you take it out, come to page 3, page 3 of this. Page 3 on the right is a socio-economic stratification chart in our country, and this socio-economic stratification chart has five questions noted against this, and these are the answers to these five questions to discover, to find. Page 3 please? This one, have you all got it It

was given yesterday. Good. In trying to find answers to these five questions is what I've been working. Now what is judicial adjudication? We have a dispute on fact, a dispute on law, familiar terms to everybody and not from today, from long, but would anybody like to make an estimate how much of your civil court resources are consumed in adjudicating dispute relating to fact? Your court time, how much of it goes? Any attempt at an answer from your experience that will enrich me? Yes, please. recording of evidence. Yes, pleadings, evidence, how much time it takes? Half, 50%. And 50 is low. No, not 50. Just Okay. Any other attempt? It depends upon the nature of the work which is assigned to the particular officer. No, I'm asking generally courts in a complex, not a particular judicial officer or a particular court. Well, that is -- let me now give an answer. We have three parts of judicial adjudication. The first is fact. Dispute, what is the fact? Second is law, and the third is application of law to facts. 95% of court resources are consumed in adjudicating dispute of fact, and friends, in that 95%, what is the element or component of genuine misperception, acceptable misperception, acceptable error, negligent error, and knowingly false averment. Let us divide the 90. Segregate the 95 into various parts. Would I tap on your experience or shall I speak myself? I see. Okay. Only as of in our country today, only 5% is genuine misperception of fact. Another 5% is acceptable because a person is entitled to his own belief in the adversarial system of justice until he is able to voice yes, I see this is a fact. This is a water. This is a glass. This is a telephone. This is a book, or if I am wrong, the other side can respond. Court will give the judgement. That makes it 10. The next 10% is negligence, not bothering to check what is the fact. Straightaway saying no, it is this, or it is not this, but if you had checked it, like even when you go to your ATM to withdraw money, don't you check when the notes come out how many they are? But does a party does that checking before he makes a presentation to the court it is true or false? Could I have checked it and then said only what is true? So that takes it, negligence takes it another 10%. So there is a total of 20.

Friends, beyond that 20 is intentional wrongdoing, intentionally give -- painting a wrong picture of fact, or denying what is a true fact, and that takes away -- that takes away a bulk of the court time. This happens why? It happens because till recently, now the courts have started. Till recently courts were not taking any action against the person who wrongly denied, or wrongly averred a fact or wrongly denied a fact. Let me come back to MACT for a while. The learned officers with me today, when holding court on presiding over MACT cases for how long average

One year. One year. All right. One year is long enough. Even 8 months would be long enough. Now the kind of claims to income of the deceased that are placed before you, yes, it may come [inaudible 00:38:36]. If that were true of our country, we would be a very rich country. Only point is exaggeration. Whether it is an injury, it is exaggeration, and I'm sure you would have also come across maybe few instances of fake deaths, or let me put it somebody has died with one child. No, no, no, my brother's children are also my child. So we have five claimants, five dependants, and other all types of injuries exaggerated whatever it is. Now here we have the claimants who are exaggerating. Now that exaggeration has no penalty, and because of absence of any penalty, you are as MACTs loaded with adjudicating is it true or false? Now take the other side of the coin. Insurance company, this defence, that defence. Of course, as law has evolved over the last on this field, many of the defences have been now taken out of the ambit of defence, but still denied, denied, you prove. Insurance company, you have a staff, you can have it checked, and report that yes, and they say, yes, we have found out these are the material facts, and these are the disputed facts, but unfortunately, now I am saying so the next few sentences only for academic purposes. I don't mean ill of anybody, but until I speak freely, I will not be able to serve the purpose of academic development for which I am here. It is only for academic hypothetical cases.

Question I am posing is of the lawyers who appear in the MACT courts, how many of them are well aware of the distinction between a material fact and an evidentiary fact? Yes. Would like to enlighten me with your experience I think you have had ... Pardon me I think you have hadDifference between a material fact and an evidentiary fact, the lawyers who appear in MACT courts Hardly any. Hardly any. I would say none. I would say none. Yes, tragically yes. Why? There are two parts. Here I have to blame our legal education system because this is one fundamental, which we don't learn in colleges. I went to the DelhiI have great respect for my professors. Few of them are still alive, but this part they didn't teach me there. I was fortunate to be the son of a well-to-do top lawyer of his time. That was my late father side, and he taught me at home or in the evening, yes, son, if you have to succeed as a lawyer, first thing to learn is the difference between fact, law and application of law. Second thing, learn the difference between a material fact and an evidentiary fact. I'm just repeating to you what was taught to me 46 years back, and that is one reason I could rise in life, make my success. And then also I was the earliest to be designated senior, and I was the earliest senior to have taken voluntary retirement. I said now I am on the voluntary retirement at 51, I said no, now it's voluntary retirement. Of course, I get no gratuity or anything. No pension, but I had earned enough. Now I want to give back to society, both by way of intellectual contribution and monetary contribution in terms of what I'm doing as ground-level research so that that part of my country, those citizens who don't get justice, they are able to get justice. So that fact, law, application of law, and the difference between fact -- material fact and evidentiary fact, friends, I would like to take 10 minutes to explain that to you. Take this large sheet here, this large sheet. Open this side. You have the ultimate picture 10, ultimate fact. Now ultimate fact is a term we use, accident happened, murder happened. Property dispute is there. That is a very generic description for the end result. Below that are usually in any civil or other litigation, anything, or even criminal prosecutions, anything between 3 to 10, I have taken 5 as an average, material facts. Let us take a sample, and this one I'll take from the criminal law field. Whether a person was shot with a gun, with a rifle, or with a pistol? Is it a material fact or evidentiary fact? Evidentiary fact. Evidentiary fact.

Correct, correct. I am happy to hear it. It's only an evidentiary fact. Now whether he was killed with a lat stone blow or a stone blow? Again, evidentiary fact. But when it comes to causing injury with a weapon, whether it is sharp edged or not, that will be Material fact. I am very happy to hear this from you, and I must give you all compliment because this much quick response I have got at very few occasions in academies all over the country. So I must go back a happy person. Now, what distinguishes a material fact from an evidentiary fact? All are laws. Criminal, civil are common law, statute. They are all based on elements. What are the elements? The generalised facts which the law notes fact A, fact B, fact C. If there be a fact ABC, the consequence prescribed is this. You open any statute that is a fundamental, but this fundamental is where the element of the legal rule, if it corresponds to a material fact to a fact, then that fact is material. That is what I have written here at the top here. The importance of material fact depends on the elements of the statutory provision and/or the principle of law invoked. When a fact averred by one is disputed by the other, it needs adducing of evidence to enable the court to return a finding of fact, that is adjudicate whether the material fact in issue is as a question of fact, true or not true. Now evidentiary fact, I have put in in relation to material fact 4 in this picture, which it could be particulars, evidentiary facts, documents and records, and there could be sub-evidentiary facts also. If there is a suit for recovery, title suit for recovery or possession in your court, the sale deed by - the purchase deed by which the plaintiff purchased is a material fact. It's a principal document. You kindly have picture 9. This one, principal document. If there is a promissory note, mortgage

deed, it's a principal document, but that he was paying the electricity bills of the house. He was paying the annual lease money, house] etc., they all fall within the category of evidentiary facts. The purpose of pleadings is statement of the material fact with sufficient detail. And only if a material fact is denied, now either it can be a false averment, I am not saying that every plaintiff is right. My research reveals 30% of plaintiffs are taking false or speculative suits. 70 are right, and in 70, it is the defendant who is other way around. I do not know what -- it will vary from state to state, what is your experience, but that is a reference of Delhi average. Now if a material fact is not in dispute, do we need evidentiary facts? We don't. But if it is in dispute, we need evidentiary facts. Now anyway interesting, any of you have been a judicial officer prior to the 2002 Amendment of the CPC? No, you are already appointed before 2002. Yes. Very good. Before 2002, the examination in chief was oral, and you used to record it. Now, 2002 amendment made in that affidavit, and I am -- I don't mind saying frankly, it has corroded the whole thing. Why? Whatever is written in the plaint is copied in the affidavit. ... case flow is adjudicated. There you are. The entire There you are. And when a witness is cross-examined, how do you explain this? Answer is the lawyer has got it signed. I don't know. Have you had that experience? Yes. There you are. Okay. Now, if a material fact is not disputed in the written statement, what that affidavit should have been? Fact number so and so in two words, three, not number, three, four word description, not disputed, proceed to the next. But the next fact is disputed. Therefore, the following evidentiary facts, 1, 2, 3, 4, 5, all further facts are given. But may I ask a practical question? Have you come across an affidavit of that type filed before you in any case? Not at all. There you are. So these are the factors where our legal education has affected the efficiency of our justice delivery process. Now, over the last very many years I've been addressing both here in Bhopal and at other places in our country, and I have been noticing and many times this is what I ask that who are furthermore been earlier in my session? And many times I come across judicial officers whom I have addressed. They said yes, we noted this. We did this in practice, and we found this as a result, and the result was that. Well, that's what that judicial officers have been telling me that in our court, we are now able to have much better disposal and quicker result, because we follow some of these tools and techniques, and what you are having here in this paper is some of that. You can read this later. I will refer to it tomorrow in one session after I have completed the MACT portion. Let me proceed with these basics on this large A3 sheet. So if a principal document is disputed, there are two parts. One is proof of the document, and that is separate from what the document proves. Then we go. If it is not disputed, no evidence is required. Now how does this fact, law and application of law fit in? You kindly come to picture 11, which is civil side. Picture 11, this scale. You have material fact 1 that is admitted, no need of evidence. Material fact two is in dispute. We have the plaintiff's evidence as documents. Absence of document is today a piece of evidence. It was not so in 1908. Life has changed. That time evidence was oral. Today anything there is document generation. People keep documents. They take documents. They have documents generated, but our law in practice we are still following the 1908 model. We need to change and you can change. The defendant's evidence, then you carry out as judicial officers fact -- material fact finding, that is material facts of the case as established, and logically, rearranged. The next is principle of law and its elements. Where do you get that? From the statute, or if it's common law, on the case law. And the last item is application of law to the facts, material facts as established. And then you say, yes, the result is, this is the result I give. This is my judgement. In a criminal side, the position is slightly different, because the prosecution evidence is of evidentiary facts. In fact, on the -- unlike in the civil side, in the criminal side, the prosecution evidence is mostly on hypothetical material fact. This

happened, but we have no direct proof. We have to have indirect or circumstantial evidence from which you must infer this material fact to have taken place. And the accused is normally keeping quiet, and he relies on the presumption of innocence, and of making loopholes in the prosecution case. The 313 statement is recorded to give him an opportunity to explain and you know how few exercise the option of the defence evidence under 315. Separate from all this, I'm separately writing part of my main research on the CRPC. What is the CRPC? What should be the CRPC? And it is my belief that on certain material facts, the accused response should be taken before framing of the charge. Not that after the prosecution evidence is complete, he thinks okay, now I can take this defence. I'll just say I was not driving. My driver was driving. I'll just not take any names. If that was the defence, it should have come immediately after the supply of copies, or shouldn't have waited X number of years. That is a defect in that part of the procedure. I am working on that, but this was just to explain. Ultimately, when you weight prosecution evidence, you have the elements of the offence against the fact as established. If it is proved, you say guilty. If it is not proved, you say no, not guilty, or you have the benefit of doubt. Would anybody like to enlighten me with a definition of benefit of doubt in a criminal case? How would you define or explain benefit of doubt in a criminal case Not for Yes, correct, that is the term. How do we explain it? Make an attempt. It's worthwhile. We are here in Academy. Loophole in the prosecution [inaudible 00:56:29] Loophole in the prosecutionNo, that is not explanation. That is the accused attempts. I'll back to defer there. Prosecution is--where we make. That is a result, but what is the precise meaning of the term benefit of doubt or beyond reasonable doubt this should happen, but the materialCorrect, but that is not the description. You are all right. All of you, but that is not the description. reasonable and could have a person to the maangement. Yes.

That is reasonable term. That is closer to one of the Privy Council definitions, and that's what you are quoting and correctly, but I would like to go-- We cannot entertain a mechanical doubt. Correct. A doubt must be ... Right. hat doubt is...This is the substance of a number-- are not proved in tune with Section 3 of the definition of ...Right. But Section 3 does not provide any standard. That is not there. Okay. Let me attempt a definition if I am able to prove it. It is the principle laid down and used to it.No, but this principle has been laid down in so generic terms, so as to be of little use in everyday life. So I'm making an attempt to learn from you all..... Not in that broad term. Okay. Let me make an attempt. You all know presumption of innocence.....Correct. The Wilmington case of 1937. Now presumption of innocence operates as weight in one pan, and your assessment of the – now mark my words. Your assessment of the persuasive force of the prosecution evidence operates as in the other pan, as a weight in the other pan. I repeat. Your assessment of the weight or assignment of weight for the presumption of innocence operates in one pan, and your assessment of the persuasive force of the prosecution evidence operates as weight in the other pan of judicial scales. Now we are all humans. We are not computers. We could commit an error in assessing the persuasive force of the prosecution evidence. We could also commit an error in assessing -- assigning a weight to the presumption of innocence. That error, which we as humans or you as – it is benefit of that error is given to the accused. So that is how I have developed this definition of what is the benefit of doubt. Now, another illustration. If I were to weigh this, how much weight it is? All right. It is around 200 grams. But if the presumption of innocence is 220, then it is I can't convict, but if I had an electronic weighing scale, which I don't, a judge can't to weight, then he will know exactly whether it crosses the line or doesn't cross the line, so the difference between electronic scale measurement and a human mind, which all of us work as judicial officers is that zone comes in that beyond reasonable doubt. So we finish with this reasonable doubt. Come to picture 13, because – okay. Come to

picture 13. All over the country wherever I went, I found, and I will also told lawyers begin yes, your honour, here is the Supreme Court judgement in my favour. Now Supreme Court is binding or here is a High Court judgement all force, but the practice is missing, A, what are the material facts? Missing. How many times you have had lawyers appearing before you who would simply say, these are the five material facts. These are the two principal documents. This is in dispute. This is not in dispute. This is the evidence on this. How often would you find that? Very rarely. Sometimes good lawyers do it. No, I will not say never. Particularly, in civil courts. Yes. When you go to civil courts, then you may come across such... Right. Now when a lawyer says, there is a Supreme Court decision, you have to respect that, but decision comes on what? I asked myself. It is on a statute. So if you were to tell the lawyer that all right, I will read it, but please tell me the statute? He will tell you the name of the statute. He says, can you please read out? 90% the answer will be today I am not carrying the bare Act. 90% I am not carrying the bare Act. All right. You'd say, take my copy, or come tomorrow with a bare Act, or take from the library, come. All right. Read the section. Section will be read. And you ask as judicial officers, which you must, what are the elements of this section? What is the reply you will get today? You will get – you might get a counter question. Sir, what are elements? See, I am asking you what are the elements of this section? You will get this kind of an answer. Still we have to carry on. It will take time before society changes, legal culture changes, which we are all have an efficient justice delivery. But for you as judicial officers, once the statute has been identified, there is one request I make. Always go make a habit. I'll just take two minutes first to tell about habit. Human mind has three parts: the conscious, the subconscious and unconscious. That is how we all operate. The unconscious part is one which has come as part of our learning, which has passed from conscious to subconscious, and then is retained in the unconscious mind of an operating as a reflex action.

So if we make a habit as judicial officers of two parts, one is straight away differentiate between material facts and evidentiary facts. Of course, I will not take that illustration here because you are all senior judicial officers, but if I were addressing induction trainees as I will be doing next week in Bombay, I will be telling them, I always tell them in the past, that your judicial Academy should design a board game where they should have cardboards, and they should have some facts written.

And how quickly you can make out whether it is material, nonmaterial, evidentiary, or irrelevant, and place it in the right box will develop your skills as a induction trainee judicial officer, which you can later rise to upper ranks and higher courts because your mind develops to quickly recognise and you pass out from conscious thinking to subconscious to unconscious thinking, and you know exactly then your mind tells you straight away, yes, if this is the material fact, this should be the list of the documents, this should be the list of the evidentiary facts. Come on Mr. Counsel, why are you not speaking up? Where is this? Where is the proof of this?

The result is the lawyers go outside the corridor, and they say, we cannot fool this judge. That is one talk in the corridor every judge would like to hear, but when it comes to your role as a judge, once a statute has been identified, make it a habit in the beginning it -- even at this stage, in the beginning it will take a few seconds, ultimately, it'll becomes subconscious. What would be my decision on first principles if this statue wouldn't be there? This is the picture 13 please at the bottom right, picture 13. What would be my decision if there was no law, nothing?

After you have got some indication of first principles, the second is what is the rationale for this statute? Every statute has a statement, has a preamble, and a statement on objects and

reasons, and even otherwise from the frame of the scheme of the statute, it gives a fair idea why that statute is there? What is the purpose? Then you have plain reading of the statute.

The next is breaking down the section, that is the legal rule into its elements and sub-elements, because some legal rules have elements and some elements have sub-elements, and there are other legal rules, which leave it to your discretion where you have to exercise your discretion based on the other fact. The legal rule provides that element, but leaves its decision to you. There is no mathematics involved. Yet there is an interpretation. There is case law. And then application of law, that is the elements to the facts as found on which again you will find case law, you double check, and that is the outcome, your judgement, which is tempered by equity and justice.

So this first principles approach of statutory reading, element, addressing and discussing can soon at any age, you are very senior, but even then it is my belief, I think I'm the oldest person in this hall. It is my belief that even for me today, it is learning, and improve ourselves to better productivity. Now you come back to the other side of this page, the first picture on the top right.Yes. That is converted material factYes.Material. Correct, but I said, well, I'm happy to find you are well-versed with the latent – original terminology. Good. Okay. Now you come back to picture 1. There is some event, which is a cause. A spark is there. There is one party's perception. There is other party's perception. There is dispute accrual, communication, disagreement, negotiation, attempt at self-resolution, reaction, protocol, or one party comes to court if not ADR.

Now the first stage is pleadings. Unfortunately, the five stages of the civil judicial process, I just ask a short question. Is it only at the – all over the country I find only at stage 5 that the case receives full application of the judicial mind, and at stage 1, stage 2, stage 3, stage 4, it does not receive the deserved application of judicial mind. It is my belief based on ground level research that if judicial officers gave attention at stage 1, pleadings, civil justice in our country will become much quicker. Why? Kindly have picture 5, or let me also say picture 2. Picture 2 is 5 stages of the judicial process, how the rival claims and defences are put forward first as pleadings, then as preparatory, then pre-trial summary or issues, trial, oral evidence and then arguments.

And what is picture 7? I'd like to explain. A party know – the truth is this. A party may have misperception it is this, but does he try to improve it? Or does one party of the two try to sally it, worsen it? And it is this sally or worsen by one part of the two that creates the load for you as judicial officers to adjudicate. Why does he do it? There is no penalty in the end. There is no penalty in our practice for wrongdoing.

Now, the last few years, things have changed or changing I'll say. I won't say they have changed. They are changing. And Delhi High Court, we had recently two judgements prosecution ordered, and one judgement has accepted the apology, but has given a very detailed judgement. In fact, Justice Midha would have been here. He is the one who rendered that judgement using Section 209 IPC against those who make false claims or defences before the court. That is what I have tried to explain in picture 7.

Now what is the pleading process? Kindly come to page – picture 5 where I have the plaint, the written statement, the replication, the special pleadings, and at the conclusion of the process, what is there today, and what you can with existing law, I am saying existing law make it is depicted by picture 8, which is titled making full use of the pleading stage so that you know which

facts are admitted, which are disputed, which are insufficient or redundant, and they are removed by that stage. And lastly, if later found faults are concealed, costs and penalties that deter. So this is where the pleading stage makes the difference.

Now in MACT, which I'll be addressing in detail tomorrow, when you give a judgement, there are only two parts, ultimate facts: who is liable and what amount? But these ultimate facts have many material facts below them, and have more evidentiary facts in case of dispute. The unfortunate part is everything is I deny, you prove. That is unfortunate culture, which gives in so much inefficiency in our justice delivery in this field.

So friends, I think today's session I'll now bring to an end, but I'll certainly field any questions on what I have addressed that these fundamentals which are true of any jurisdiction will also have their role to play in our MACT matters. So that concludes my submission before you today, but any questions on this so that tomorrow I can proceed on the next. Yes, please. Any questions on what I have addressed so that I can be more clear? No, at the back, any questions?

Tomorrow sir.

Tomorrow. So you will prepare a big to cross-examine me. I am happy. You can do so. I am happy. To what extent judicial officers can restrict the parties to.... To restrict the parties to..... No. Now there are two ways. This is because sometimes a judicial officer, let me answer, has his practical difficulties at his level, and very many times I found that judicial officers want to take an approach, but they feel a little fearful that if we take an innovative approach, we may not get a necessary complaint. Why is this judicial officer? Okay. I'll answer this tomorrow, because it was here in Bhopal about two years, three years back, I raised one such question, which appears in this, the three column list of dates. May I request one minute? If you just have this, come to page 40 of this. I'll take a minute now.

Page 40 is a three column list of date format, which is a tool developed by me. So once about three, four years back, I was addressing here, the judicial officers asked me to explain it further, and all of them that day it virtually became a three column list of date session. I was there for the whole day explained. But then at the afternoon session, sir, this will help us.

But what do we do if immediately there is a transfer application or a complaint? I said yes. I asked the others. Do you also have the same fear? So yes. I said okay, I'll address the fear. Let me think of a solution. Today in principle, how many of you agree that this is a useful tool? All of them. There was that day 60 in the session. All of them agreed. It's a useful tool. I said okay.

Now I said what you do is, when you turn the pages, you all know, in most cases I will not say all that it is this side of a case or that side of a case. But just in about 80% cases you know with 98% surety if this is to be decreed or dismissed. So those cases which are of full surety, post them all for a particular date. Keep that date confidential in your mind. On that date suddenly you will find that there will be a list in your own list in your court, which has 12, 13 cases, which are only this way or that way. You pass the same order in all those 13 cases.

Now because they are this way or that way, and you have passed it in all 13 – 10 cases or 8 cases, nobody can say he did like that in my case. He did in all cases. And because it is an open shut case, one way or the other, the complaint is zero. But that was a solution I found that day, I said while having tea, and then I addressed later in the last session.

But fortunately for them after that I was appointed as amicus by the Delhi High Court, and I again said as an amicus, please ask these parties to prepare this and file so I can assist the court better as an amicus. So I asked the Delhi High Court. The Delhi High Court then passed an order, and also added a few lines which I have copied here in this on page 59, the Delhi High Court order.

So if today any judicial officer in the country passes an order for three column list of dates as many have ever since, simply cite this order and pass because when you cite an order and pass, there is no question of application for transfer. So with that I'll close today's evening, and please keep ready with whatever questions MACT, otherwise civil, criminal, I'm here. I want to go back having delivered the best I can. Namaskar. I really understood Ningamma's case. Which one

Ningamma. Ningamma's case. That is--That is 163A, sir.Okay. We have one session on 163A anyway so. Yes. One more session. One particular recession on that itself. So we can probably take up that issue then. On Monday. Justice Bhatkar is there for that particular topic. We can probably have. So I think we'll close today. It's been a long day. So we'll meet you tomorrow 10 o'clock. Thank you, sir. See you. Thank you. Thanks. Happy to be here....tomorrow.

SESSION 5 – LIABILITY OF INSURANCE COMPANIES IN MOTOR ACCIDENT CLAIMS WITH RESPECT TO GRATITUOUS PASSENGERS, CANCELLED POLICIES AND COMMENCEMENT OF POLICIES

Ready for the start First of all I am very informal. See I am also learning with you simultaneously. See don't treat me as a person who knows everything right. It's a request. Let us just see the subject simultaneously and hands together right Agree Thank you. So before that I would just want to speak a word about me. Not much. My name is Srinivasa Raghavan an advocate of 27 years of practice. Initially I was in Chennai High Court. Then I went to myplace and I went to Madurai Bench in 2004. So I have been practising in Madurai Bench from 2004 onwards. My field of specialisation is writ side and insurance side and I have been appearing for both I think all the three claimants as well as companies as well as owners also at times. So my connection with Academy is that I have been in State Academy in Tamil Nadu from 2005 onwards and NJAC I think the second time I am coming. Okay. So before that going to the venture I just want to at least get yourself introduced to me one by one. I will be happy if I come to know your name and designation if you don't mind. Any problem Please....and please be seated and please don't...I'm DineshYes sir. MemberMumbai. That's fine sir. Thank you sir. Mumbai. Sir Good morning sir. I'm MTRC Member MACT Nagpur.Nagpur. Okay. Next sir I am Balakrishnan District Judge from Erode.Erode yes sir. Your Satish Kumar told about you to me yesterday. Nice meeting you sir. You sir Poorna Jaya Anand from Thanjavur District Judge.Yeah I know. Yes sir. Thank you sir. Next sir....That's fine sir. Ma'am...That's fine ma'am. Sir...Tripura. That's nice sir. You sir Good morning sir. Good morning everybody. I am Laxmidhar Biswal Member State Transport Appellate Tribunal Odisha Cuttack.That's fine sir. So you sir...Myself Member 2nd M.A.C.T. Sambalpur Orissa. Thank you sir. Good morning. I am Sankari Das from Tripura Additional District and Sessions Judge.That's fine ma'am. Myself Mohinder Virat PO MACT New Delhi

Patiala House Court. Yes sir. Ma'am yourself Barkha Gupta Additional District and Sessions Judge Delhi presently looking after the work of MACT as PO. Yes. Take this yeah. Okay. That's – so yourself Okay..... Oh fine. Yourself sir I am Saidalavi MACT Judge Thrissur Kerala. Oh it's fine. Sir Subhash Chandra ADJ Agra UP. Okay. That's fine. Good morning. I am V. K. Rajan MACT Thiruvananthapuram Kerala. Yes sir. Fine sir. Madan Gopal Vyas Judge MACT Barmer Rajasthan. Yes sir. Puran Kumar Sharma Judge MACT Jaipur Rajasthan. Okay. Sir yourself I am ... Yes sir.... Additional District Judge ... Uttarakhand. Yes sir. Sir yourself Madan Kumar Sharma Additional District Judge HP Himachal Pradesh. Okay sir. Good morning sir. My name is Raveendra Babu. Rajahmundry East Godavari District Andhra Pradesh Additional District Judge. Yes sir. Ma'am My name is ... PO MACT Manipur. Oh fine. Ma'am yourself Good morning sir. I am Norin Nigam Additional District Judge District Balaghat Madhya Pradesh. Yes ma'am. Ma'am I am Sikha Sen Additional District and Session Judge from West Bengal. That's good. Ma'amokay. So since all of you are very much senior hands in the field so I think my job is made easy. Before entering into the topic I'd like to say that after the advent of the private insurance companies in 2004 I hope almost all the legal positions are well settled. Very few topics in MACT are not settled or debatable and there are some grey areas still but most of the subjects are I think topics are settled. But when the matters are being settled we have got some confusion regarding the rights of the court to give directions which are not basically inherent of the MV Act. I would say that when pay and recovery was first introduced in 2004 more popularly by Baljit Kaur's case and all of us remember well that there are cases in which the Supreme Court was pleased to give a direction by its exclusive power under Article 142 of The Constitution of India. So lot of tribunals they started giving such a direction for the simple reason that the act is a beneficial legislation it is primarily meant to alleviate the grievance of the victims of the road accident. But now slowly as time has gone now we have got some areas where Article 142 cannot be invoked by High Courts. It is not settled up but the direction for payment recovery is not alien to the MV Act. That is what first I just want to impress upon all of your good sense. See the Section 147 of the Motor Vehicles Act is the most misinterpreted or misunderstood or most cumbersome procedure ever in the Indian judicial history I would say. No judge or no advocate or no jurist governing the field is able to decipher Section 147 especially sub-clause (5) and (6) in the manner we understand. So payment and recovery direction is according to all of us is inbuilt in the section itself. Now the question is whether payment and recovery can be resorted to as a matter of right or mere asking. My simple suggestion or humble opinion is that I have just evolved a small formula which I may request you also to consider whether it is right or wrong. We're just learning together. So first ingredient I want to impress upon is that we'll have to tick the following four aspects. Number one whether the policy of insurance is in force or not that is the foremost consideration before we wish to give a direction for payment and recovery. As you all know Motor Vehicles Act is a special branch of law of torts and we're having a primitive concept called strict liability as a source of the MV Act. So unless there is a criminal liability on the driver or the servant unless there is a vicarious liability on the master or the owner there is no liability in the MV Act. So primarily we should find that the owner of the vehicle is vicariously liable to undo the civil wrong committed by the driver. So next is to

we're going for what is called indemnification. So once you find that there was a civil wrong for which the driver or the servant is basically or primarily liable we switchover to what is called a vicarious liability fixing the negligence or the liability to compensate the claimant on the shoulders of the owner of the vehicle. Here is the stage where the Tribunal has to stop for a moment to whether to go to the next stage or not. In some states like Tamil Nadu Transport Corporation they don't have insurance at all. In Kerala I think they have insurance with National and New India. KSRTC is having insurance. There was such a period when there was some insurance. Okay. Now But subsequently they have been taken by the government. So all the Transport Corporation buses are insured. No not ours. Oh fine. But they are insured. Even now there are certain cases. I see. But in Tamil Nadu none of the Transport Corporation buses and none of the government buses are insured. So in such case the question of going to insurer does not arise for consideration at all. Now according to my little idea when there is a finding of vicarious liability before going to shift the liability on the insurance company we'll have to see whether the insurant is liable as a matter of indemnification first thing is there should be a policy of insurance in force at the time of accident. This can never be compromised. Unless there is an insurable interest as on date of the accident there can be no liability. There are some exceptional. I will come to the second topic. So number two the victim must be a third party. Whether the victim is a third party or not So we all know that an insurance policy has got two parties: A party and B party or first party and second party. All the owners of the vehicle are the first party or A party to the policy of insurance. The insurance company of the policy is the B party or the second party. Motor Vehicles Act has not defined who is not a third party. It says third party means the government. That's all. So the simplest definition is in a policy of insurance there is an A party called owner. There is a B party called insurer. They are called first party and second party and everybody is a third party. So a person who is either travelling in the vehicle or who was a pedestrian or travelling in some other vehicle then he gets into the role of a third party. So there are some operation of law by which a third party though he is inside the vehicle he is excluded. I will come to the point later. So the second point is that -- first point is there should be insurable interest. Second point that the victim is a third party. If these two are tick we can go to the third one. Third one is whether the operation of the coverage of the third-party is taken away by the operation of law or whether the third party coverage is removed by operation of the law. The best example is we are going to deal a gratuitous passenger. A gratuitous passenger is no doubt a person who was travelling in the vehicle but whose coverage is taken away by a specific operation of law by a necessary what is called I think exclusion of the person. You may know that a person who travels in the goods carrier and who is the owner of the goods or his representative are included. So they are covered but a person who travels in the goods carrier who is neither the owner of the goods nor his representative nor the load man nor the driver nor the cleaner or nor the load man they are not covered. So in 1994 when the MV Act was amended we have included two separate classes of people within Section 147 when they travel in a goods carrier. These two are the owner of the goods and their authorised representatives. Other persons who cannot travel in the vehicle are excluded from the definition of a third party. So if you find that for some reason that the victim is not termed to be a third party or

his coverage is taken outside the act there is no indemnification. That is what we are going to deal for the first time. So first one is insurance availability. Second is he is a third party. Third such a person is not removed from the definition of third party. Number four is whether the policy has been cancelled or not. The fourth is becoming a debatable topic and I will come to the fourth one later. So you have to just satisfy these four ingredients. If you find that all the four are tick you may proceed further in terms of liability being fixed on the -- what is called -- the insurance company. If all the four are satisfied yet there is a violation it is a matter for payment and recovery. This could be the -- yes sir. I think point number 1 and 4 are No there are cases in which the policy was not even in force but not cancelled. For example commencement of the risk date and that's why I come to the point later. So point 1 and 4 maybe little bit similar but they are slightly different when it comes to the operation of law. So these four if it is satisfied you may proceed to the question of indemnifying indemnity on the shoulders of the insurance company. In case of any violation under Section 149 it is a matter for payment and recovery. So with this I just want to go to the next topic in -- this is within the five. Do you have any clarification or interaction or something we can go the next. With this five do you have anything to be just enlighten me or I think to tell me anything then we will go to the next one First is there should be an insurance policy in force. Number two the victim of the road accident who claims compensation is a third party. Number three his coverage is not excluded by operation of law. Number four the policy was not cancelled by the insurance company. Anything sir We can go to the next or anything else Next Okay. Now the question is we are going to the first coverage called liability of the insurer for gratuitous passenger. As I said before 1994 when you see the comparative study of the MV Act these persons were not included in the act: owner of the goods and his representative. You just imagine like you were all government servant having transferable job. You are transferred to some other place. You send your goods in a vehicle. See there are some people who can travel along with the goods in the same lorry. We cannot. So we send our representative. These persons necessarily have to be covered. So Parliament thought fit of amending the MV Act in 1994 by including these two persons as the persons who are covered by the basic premium. So the difference in Section 147 is that a person who is a driver a person who is the cleaner a person who is a load man and a person who travels in the goods vehicle as a owner of the goods or representative they are covered by basic third party premium. Owner or authorized agent also. Sir Owner or authorized agent also. Yeah owner of the goods not the owner of the vehicle. Owner of the goods. And his authorized representative they are all third parties. Their premium is paid by the owner as a basic third party premium. There is no question of payment of additional premium at all. So if you find that the victim of the road accident is either the owner of the goods or the representative the insurance company is primarily liable. You have to go for indemnity clause. The doubt comes only when you find that the victim was not the owner of the goods or he was not the load man. Normally all the claimants say that when he is not the driver of the vehicle when he is not the cleaner they say all the victims are either load man or the owner of the goods. So this is the evidential point of view. I just leave it to you absolutely. I have got nothing to say regarding how to appreciate the evidence. Your wisdom will decide. But once you find on the basis of

pleading in evidence that the victim was not the owner of the goods or he was not the authorised representative of the owner of the goods what is to be done And here I would like to say that though judgments of other High Courts are not binding on your high court this judgement of Madras High Court I would say it is a compendium on the law relating to the liability of the insurer for gratuitous passenger in goods carrier. So I have requested Ms. Shruti to find out the alternative in Manupatra and send across to all of you. It is there in Tamil Nadu all leading Tamil Nadu magazines. This is a full Bench judgment by Justice Mukhopadhyaya and Justice Mishra and one more judge. It has given a summation para which will give you a special idea of what is the law of the land regarding 147. From para 31 it reads as follows. Thus from an analysis of the statutory provisions as explained by the Supreme Court in various decisions rendered from time to time the following picture emerges First one is the Insurance Policy is required to cover the liability envisaged under Section 147 but wider risk can always be taken that is subject to payment of additional premium. Section 149 envisages the defences which are open to the Insurance Company. Where the Insurance Company is not successful in its defence obviously it is required to satisfy the decree and the award. Where it is successful in its defence it may yet be required to pay the amount to the claimant and thereafter recover the same from the owner under such circumstances envisaged and enumerated under Section 149(4) and (5). This is what I say. 149(4) and 149(5) are the enabling provisions which enables the Tribunal and the High Court to give payment of recovery. You are not supposed to invoke Article 142 at all. Even without recourse to 142 or [inaudible 00:18:56] Section 142 all the Tribunals and all the High Courts are competent to grant a direction under Section 149(4) and 149(5). Then under Section 147 of the MV Act the Insurance Company is not statutorily required to cover the liability in respect of a passenger in a goods vehicle unless such passenger is the owner or agent of the owner of the goods accompanying such goods in the concerned goods vehicle. This is what the amendment in 1994 has brought forth. Then five since there is no statutory requirement to cover the liability in respect of a passenger in a goods vehicle the principle of 'pay and recover' is not applicable ipso facto to such cases and therefore ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay and recover. This is what the law after 2004. So when you find that he was not a person who is the owner of the goods or representative when he is found to be an unauthorized passenger the liability of the insurance company is zero. Where by relying upon the decision of the Supreme Court in Satpal Singh's case it has been overruled either expressly or even by implication there has been a direction by the Tribunal to the Insurance Company to pay the appellate court is obviously required to consider. See between 2003 Asha Rani and 2004 I think Baljit Kaur lot of confusion were ruling in the field. Some courts were following Satpal Singh till 2004. Some courts were following Asha Rani till 2004. Some courts were following Baljit Kaur till 2005 when Nanjappan came. So for such a period the High Court says you may consider giving pay and recovery because the law was not settled. So I think the chance for you is very less. If any case comes between 2002 2004 when the law was not clear the chances for giving pay and recovery is there but now I think we crossed the stage wherein 2006 this is not going to arise. This may come to High Courts. Then no such direction can be issued by any trial court to the Insurance Company to pay and recover

relating to liability in respect of a passenger travelling in a goods vehicle after the decision in Baljit Kaur's case. So the judgment of the Supreme Court of India in Baljit Kaur's case is the cut off date. I think it is 4.1.2004. Yes sir. See ... is dealing with driving license case. I am more only on gratuitous passenger in a goods carrier. So whenever there is a judgment by the High Court if the judgment date is after 2004 that is after Baljit Kaur the Supreme Court says no pay and recovery at all. The company is not liable. The date of accident is immaterial. Since the law has been specifically clarified no trial court is expected to decide contrary to such decision. So this has been held by the Madras High Court only by following the Supreme Court. That's why I said it has got a persuasive effect on you also. This judgment will come for nearly 30 pages. It is almost a compendium of law relating to goods carriers. Then where however the matter has already been decided by the trial court before Baljit Kaur if any trial court decides the matter before 4.1.2004 the High Court has got power to give payment and recovery. Now we are not going to deal with any accident between 2000 to 2004. So your consideration is if you are going to find that the victim of the road accident is an unauthorized passenger if the accident is after 4.1.2004 your only liability is to say company is not liable or if at all you want to hold the company liable you will have to hold the victim was not an unauthorized passenger but that is a different perspective. I don't want to run into suggestion. For some reason if the evidence is very clear that the victim was not an authorized passenger or a passenger who was travelling as owner of the goods or something you have to say that the company is not liable. So this judgment is followed by very many high courts. And after 2013 Kaushalya Devi is the only case which give by the Supreme Court about I think judgment on goods carrier. So if you come across any judgment contrary to Kaushalya Devi they are not good. So now the law is very clear. If the Tribunal finds that the victim is an unauthorized passenger the liability of the insurance company is nil. There can be no direction for payment and recovery. Why I am saying so is that I could find even in Tamil Nadu there are some courts after having found that he is an unauthorized passenger yet we give pay and recovery. That cannot be done in goods carrier. It is permissible in other violation like driving licenses permit violation fitness certificate but not in this. So I think this is enough for goods carrier. If you have any questions I'm ready to satisfy your doubts. Sir can you give an example of ...Yeah. For example 40 or 50 people are travelling in a tractor or a lorry to attend a marriage function or a funeral of any dead body or to attend a political conference. You cannot say they are owner of the goods or representative. It is a common scene in India. It's another mode of transportation especially election time or political conference you can see lorries and tractors taking lot of people who are neither owner of the goods nor authorized representatives. Sir what will be the position if the owner is giving it to somebody who is If it is a corporation's policy the company is liable. Act policy the company is not liable. But is he covered under 140 So they are not third party if the policy is Act policy. Then what is the difference between these two examples... There is a case called Anjana Shyam which may satisfy your question by Supreme Court. If the vehicle is a goods carrier the law is well-settled. If the vehicle is a private vehicle or public Transport Corporation the law is different. There are two kinds of vehicles. Public service vehicle like buses which is not goods carrier right Public service vehicle which are for hire like

taxis buses other vehicles. Number two is goods carriers like tractors and lorries and the trucks. Number three is private vehicle. So if you decide that the victim of the road accident is a gratuitous passenger you should see the vehicle first whether it is a public service vehicle or a goods carrier or a private vehicle. If it is a goods carrier this judgment will apply what is called Baljit Kaur. You mean to say there cannot be a gratuitous passenger in a private vehicle. No there can be. That's what I say. That's what. If you have -- if you remove goods carrier there are two vehicles are there. Number one is private service vehicle like your personal car and my personal car. If the policy is of a comprehensive policy he becomes an occupant of the private vehicle. A gratuitous passenger in a private vehicle is called an occupant. He is not a gratuitous passenger at all. He is occupant. He is an occupant. Then you would be using the word occupant. Occupant. So Section 2 of the policy covers him and the judgement called Tilak Singh case we have got but if the policy is Act policy he is not an occupant. Okay In case of public transport vehicles like buses and other van school buses it is a question of Anjana Shyam being followed. For example if 50 persons travel in a bus or 25 persons travel in a van the capacity of seat is only 14. The insurance company has to take the best 14 awards and satisfy all the ingredients by dividing pro rata distribution and the remaining has to be paid by the owner. You can see judgment of Supreme Court in Anjana Shyam. That is not in my syllabus anyhow. Anyhow as a matter of doubt I am clarifying this. Just see the vehicle. What about the Best best not ascending best for example 25 persons are there. 14 persons are covered. You just take the best 14 awards. Exactly in the sense of coverage. Subsequently there is a judgment. Yeah tell me sir. That the insurer must certify all the awards. That is called a pro rata distribution. Excess amount should be recovered by the... That's what pro rata distribution. So what you said if it is 25 victims are there when you cover only 14 persons you take the best 14 in the sense of highest award divide the 14 award by all the passengers and remaining balance has to be paid by the owner. It's called the pro rata distribution. No no. And there is a subsequent nevertheless the insurance company should deposit entire awards all the awards and recover the excess amount... Can you just cite because it's news to me. If you are ready to cite it I will... No Anjana Shyam is by the two judges. If the Supreme Court is by larger Bench we are bound by it. It's a news to me. I am also a student like all of you. If you are able to give a judgement I will stand corrected right I am happy to learn a law from... . Yeah. I know the case but I doubt it's a pro rata distribution. No nopro rata distribution [inaudible 00:28:38]. Can you make insurance company liable to all reimbursement and the policy is only for 14 people They can recover the excess amount from the owner. What do you mean by excess amount when only 14 are liable So they pay all the 25 and 9 from the owner Yes. And 9 by pay and recovery. You just – you tomorrow I think you give me the judgment. I'll just go through and I just want to learn a law from today. If it is there I will stand corrected. It is coming under theI understand. Section is very clear. I just want to know the citation. What about the tractor Sir if the tractor is attached with trailer it is a goods carrier. Then it becomes a good carrier. This judgment will apply. If a..... If a trolley cannot run by its own it needs motor vehicle. If the trolley is used for carrying any goods it's a goods carrier. It's an articulate vehicle. But in Kishan Gopal case Supreme Court has awarded... That is what. I have a simple request. I think if I am not mistaken don't go by judgements

alone. See I can give humpty number of cases which are quite contrary to each other. Am I right or not Yes. If I am not offending anybody here. See unless the law is either debatable or there is an ambiguity if you go only by judgements we end nowhere. See Supreme Court is the court. It is a final court. There is nobody above them so at times there are judgements which do not refer the previous law of the land. For example if you have Reshma Kumari Sarla Verma Rajesh and Madhusudhan which will prevail over you Sarla Verma Reshma Kumari Rajesh and Madhusudhan which will bind over you Sarla Verma. Reshma Kumari. Reshma Kumari. Why What is the reason It is on reference. See don't go by strength. For information there is no single Bench in Supreme Court as you all know only Division Bench. Whenever one judge goes on leave that remaining one person cannot sit idle. So he had to sit in another Division Bench. In Supreme Court there is a Division Bench of three judges. Division does not mean two. Division of bench results in formation of another Bench. Division Bench means also three judges. So normally three sit on reference or sits as a Division Bench. There is a judgement of Justice Kuldeep Singh when we thought about death sentence committed to life sentence in the question of length of clemency application where Justice Kuldeep Singh says because you are three member you cannot overrule two member because you are also a Division Bench unless the three member judge is especially constituted bench on reference they cannot bind over the another two judges. I've got a judgement. I will tell you later regarding what is the binding nature of Supreme Court. I expected this question. I brought a judgement. Correct but we thought it does not comes in [inaudible 00:31:46] regularly. That is what. I just want to say that first is to see whether the judgement is on reference or not. If it is on reference it is binding on other judgments. If it is by the co-equal bench the number of judges is not an important factor. So even if you cite a judgement naturally I will go only to the binding nature but as a judge you cannot so easily do. You have got Article 141 just swinging against your head but we have got the liberty to say that this is not binding on us. That is the only distinction. So I may request that if you have a judgement which is having a binding nature because of the strength we are bound by it. But if there are two judgements of the same angle we cannot just follow only the later because the law opportunity is very clear. So if you say a judgement of the same nature I just want to see the strength. So we can have a judgement and have a discussion. So if the vehicle is a private vehicle the policy is comprehensive the company is liable because he is an occupant. If it is a public service vehicle according to me it is pro rata. I'll just verify. It's subject to verification. If it is goods carrier this law will follow. Okay So this judgment so you please give it. We will have a discussion later. Then sir anything else This is what I want. I'm also here to learn some new point from you. We'll go to the next. No no I just – there was some change in our -- I think. Next is that we have got cancelled policies. I think a gentleman was asking. So the judgements are relevant for goods carrier. I think you can note. I will leave this slide here or you can note only...I'll circulate. We'll circulate. And she'll circulate the – you can take note. There are only 12 which are almost settled. You can just browse later. And regarding cancelled policy I need you to go through one specific regulations of the IRDA which not even a single advocate goes through. Only if the advocate goes through we will be asked upon to read. So I just request you to – I'll request Shruti ma'am to circulate it later to you. It is only a two-page regulation

of the IRDA. IRDA has got a statutory role. You don't underestimate IRDA. It is a body constituted under the Insurance Act to regulate the affairs of the insurance companies. So IRDA is a statutory body. The regulations of the IRDA are binding on all the courts and all the parties. There is one circular. Shruti madam these are all goods carrier judgements. If you want to circulate you can circulate. This is full Bench of Madras High Court and these are all by Supreme Court. My burden is over and my luggage is reduced. So the regulations is called I have extracted the portion in the slide. INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY IRDA (Manner of Receipt of Premium) REGULATIONS 2002. It came into force on 17.10.2002. So what we are doing without reading these regulations we are simply following the law delivered before 2002 even by Supreme Court. So when a cheque bounced -- cancelled policy case comes before you and I request all the presiding officers to please have a glance of this for a minute. This is also very much against insurance company only. It's a pro-claimant regulation. So ultimately it will help you to conclude in favour of claimants. Though I am basically an insurance lawyer when I come to a forum like this I should be neutral. Not in favour of either this or that. See when we go to the liability of the insurance the first judgement is this one. This is by a three-member judge. Inderjit Kaur. Here the Supreme Court has bombarded the insurance company like anything because you have to read Sections 64VB of the Insurance Act. If you have the Insurance Act in your hand in your library please go through Section 64VB. 64VB of the Insurance Act has got a specific provision stating that no insurance company is supposed to issue a policy by commencing the policy without receiving the premium. Act is very clear. Don't issue a policy unless the cash is on your hand. If you receive the cheque you issue the policy only after cheque is realised. But what the companies do Now it is competition. If you want one policy I can give one policy free. That's where the insurance company goes. Probably they may give even a car free if you go for insurance policy next time. So now the question is when the insurance company has chosen to receive a cheque and they issue a cover note or a policy even before realising the cheque the Supreme Court says it is your risk. Go to hell. It is there specifically by the Supreme Court say I must read. The Honourable Supreme Court has held that the insurance company is liable to indemnify third parties in respect of the liability which the policy covered and to satisfy the awards of compensation in respect thereof notwithstanding the entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium that had not been dishonoured. The Supreme Court said that the insurance company was not absorbed of its litigation even for the reason that he did not receive the premium. If somebody is against it you say you have issued a policy without receiving the cash in your hand and started the commencement. You go to hell. If you want to proceed against anybody especially against the owner for recovery of the cheque amount so this judgement was once again this was said. The Honourable Supreme Court has finally held that despite the bar under Section 64VB of the Insurance Act the insurance company has issued a policy of insurance to cover the vehicle without receiving the premium by cash and by receiving the cheque and hence the insurance company has invited the risk. See the insurance company has chosen to issue a policy by receiving a cheque. The cheque may take some time because now it is electronic payment. At that time it was not so. So it may take even one week or 10 weeks to get the amount realised. Once

they receive the cheque they started issuing the cover note. When you did so you are liable the Supreme Court said. In this aspect Section 64VB is relevant. See this is the provision of Insurance Act Section 64VB. It says no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him is guaranteed to be paid. Which company is following Section 64VB When they go to the extent of meeting the competitive insurance factor and they receive cheque and without receiving the payment when they give the policy you insure. So this was the judgement before 2002 regulation came into force. Then we have got one more judgment..... case.Sir....case. Yeah. That's fair. I will just go to one more case. Then Rula and Seema Malhotra so this judgement is on the Oriental versus Inderjit Kaur just what we have seen. New India versus Rula 2000 Volume 3 SCC page 195. Rula is the case which followed Inderjit Kaur ditto. That was in 2000. Again we have got one more judgment in 2001 Seema Malhotra. That is also before the regulations was amended. So after the regulations were introduced we have got one case called Deddappa. Deddappa is the case law governing the field of cancelled cheque after the regulations came into force. So now if a policy has been cancelled for want of premium or when the cheque is dishonoured and when the company proves that the intimation has been sent to the owner...That is prior to the accident.Prior to the accident and also to the RTO you have to find that there was a due and the effective communication of cancellation by the insurer to the insured and the RTO.Otherwise the insurance company...Then what you will do if you find that there was a communication of cancellation pakka What is the thing to be followed Can you just say the company is not liable This is I want to discuss with you. I am here to discuss with you. For some reason you find that the policy has been cancelled prior to accident and the insurance company has very promptly communicated the cancellation to the owner of the vehicle and got the acknowledgement card and they also intimated the RTO that we have cancelled the policy. The proof is available. You are convinced that the policy has been cancelled for want of premium and it has been communicated to the owner in a manner known to law. What is the judgement Then the insurance company is not liable. Okay. Then what is the liability of a third party What sin he has committed for having fallen before a vehicle for policy was cancelled If it has been communicated really communicated then the insurance company is not liable. So this is where the Supreme Court has given a severe blow to the owners and claimants stating that according to you the company is not liable but under Article 142 they give pay and recovery. They give Pay and recovery under Article 142. The question is... Exactly. This is the point I want to emphasize. The three things I want to here emphasize is only three cases the company is held not liable. I just say only in three occasions the company can say no with the seal of approval of Supreme Court. So when Deddappa case came in 2008 (2008) 2 SCC page 595 the Supreme Court has held clearly that by referring to the regulations and referring to the change of law the Supreme Court held the company is not liable. Only from the owner is liable. Anyhow by using Article 142 the Supreme Court says however as the appellant hails from the lowest strata of the society we are of the opinion that in this case of this nature we should exercise Article 142. So the law according to Deddappa after 2008 that if you find that the policy has been cancelled and it has been duly

communicated to the owner and the RTO then the company is not liable but provided it has been cancelled prior to accident there was no payment of premium by cash in the meantime and the policy has been cancelled and communicated to the owner in the manner known to law. Sir as a traveller can we also ... I am sorry sir. This is under ...142 142 only it's very clearly say in this case that too in this case only they say. The Tribunal court. No. Article 142 does not apply even to High Courts. No no ...interest is protected by the ...In my humble opinion unfortunately the law has undergone a change after 2008 because of this rule. This rule says if you want to hold the company liable you can haul the insurance company witness by court cross all these rules. This rule says after 2002 Section 3 of these regulations says... Supreme Court. Everything we can also do. So you can only say that... because of that. Unfortunately Article Section 149 which is giving pay and recovery applies when there is a policy in force. That is what I told the first if you want to give pay and recovery or liability on a company the four has to be ticked. That is why I went to four points the very first introduction itself. Now I think your question is now becoming pertinent. You know this particular person the particular guideline is that [inaudible 00:44:25]. Supreme Court does not authorise you to exercise the same sympathy as they do. As of now the law is so. I cannot just read beyond the papers. If you give and the Supreme Court approves I will appreciate you. That's different but it is not permissible as of now. Sir I have taken 142 of The Indian Constitution speaks sir what verdict the Apex Court gives that becomes the law of the land. Sir very simple sir. Under Article 141 even the obiter dicta is binding on the court but there is a reference by Supreme Court Justice Kaju you would have read where the Supreme Court says a direction given by under Article 142 is not excise of the power under any of the statutory provisions. It is to enforce the order of Supreme Court. I will say just an example all the acts are prospective right All the acts of the Parliament are prospective. All judgments are retrospective. It can be held other ways. Parliament can make an act retrospective. The Supreme Court can make the judgement prospective. It is called the prospective overruling in The Constitution of India. Now best example is Mithilesh Kumari in Benami Transaction Act and this judgment of has been held to be only prospective. It is not retrospective. So either the Parliament wants to make it retrospective. We should make a specific provision. All knows when we have made unless and until judgment ...prospective... That is what. It is called – all judgments are retrospective. If you want to hold the judgement prospective you should say it is a prospective overruling. It is under Article 142. Do you say I can follow it Can you follow it now Can the Supreme Court say Can you say Can the High Court say it's only prospective overruling No. So holding a judgement retrospective or prospective is only the power of the Supreme Court. It is not your power. It is not the power of the High Court. So Article 142 is a special power to enforce the order of Supreme Court in the manner it wants. Such a power is not given to High Courts and Tribunals. This is your question. My – our hands are strongly tied. Though I appreciate your earnest interest of saving a person probably Supreme Court does not have the messy of allowing you to do for obvious reasons. I don't want to give the reasons. Simple. Yes sir. So after 2008 if you come across cheque bounced case you just go through the violation. This rule makes the insurance company to collect the premium from electronic transfer and debit card and credit card. Why you are not doing Have you

ever come across an insurance company collecting premium over debit card It is instant by swipe or by printing the card number. They are not doing it. Why They are inviting risk by issuing a cheque. It's their headache. That's what the Supreme Court says. This says there are eight modes of payment. The company follows only two or three either by cheque or by cash or by standing instruction from the bank. E-transfer Internet netbanking everything is there. They are not doing it so it is their responsibility but once they prove it is cancelled. Sir Internet [inaudible 00:47:36] corresponding amendment in Insurance Act IRDA. IRDA is passing the regulation under Section 114A of the Insurance Act. Section 114A of the Insurance Act provides for formation of IRDA and IRDA is authorized to pass the regulations as per the Act. It is there in the preamble. I will just leave it to her. You can get the copy if you want. Please have a look on this judgment also I mean regulation also before you decide the issue either this way or that way. I am here only to highlight what is not exposed to us. That is all. Yes sir. Sir probably the reason why the insurance company cannot take the payment from debit card credit card or any other such kind of mode is that we are having agents. See if they cannot and the company cannot... Exactly exactly but every division... But the is so large... So large... People go to the company directly. You say you swipe your card and make the payment. Can't insurance company develop a software making the to pay the -- what is called You are paying everything over online. You are paying Tata Sky online. You are paying Airtel online. You are paying phone online. Can't you pay the premium online then See that will be only in metros sir. Other places... Sir you can find a kiosk in every – ATM has become a common phenomena now even in the villages. Sir let us not educate the masses. The children will do. My child knows better than me. They will – he will teach me. Probably your grandson will teach you also. So let us not underestimate our citizens. If the government initiates things it will be done. I don't know why the government is not doing. It's beyond our scope now. It is possible. If it is done these things can be avoided. It's very ... Exactly. We have got lot of examples for ere making the payment by tick. Elections are electronically -- what is called -- done. And why not online payment We are paying everything online. Examination application online. CLAT application online. Everything is online. One of that is by doing [inaudible 00:49:33]. Yes sir.... if the claim petition came in my [inaudible 00:49:41] the insurance company that insurance agent received that they don't know. So when the agent has received the amount the company is liable because the companies cannot escape liability because for the fault of the agent the company is liable. It is an internal dispute. But he is agent and the company...Let them cancel the agency and put him behind the bar. What is the innocent third party will do for the agent So deadline I am sorry sir. If I was judge I won't accept this because an innocent third party is victim and a person believes the agent pays the payment. Can the agent – can the insurer go to the insurance company to verify the payment It is the duty of the insurance company to see that such person is not appointed. See they give the blank insurance policy to agent. Why You can see an agent is having 100 policies in their hand blank policies. He just fills them. Sir what about Next next next next next. Next is commencement of the policy. I told Ms. Shruti that I will cover only these three so that I can just cover the one hour period. So I will come to the next commencement. So according to me if the agent has received the payment and issued a policy

whether it is fake or cover note I think the company is liable because as our agents it is very clear. Insurance company has to prove that he was not my agent. If the agent was the company's agent and the policy is issued it is a lookout of the insurance company to push it against the agent. Let us not punish a third party unnecessary without any justification. Company is liable to pay the...The company has got lot of mechanism to push it against the agent to recover the amount from the agent. Why the innocent third party will suffer That is what. Yes. There are not of ways for the company to realize the amount from the agent. It is not something impossible for the company. So I think next I go to the final. Yes sir. Yeah. Shall I go to the commencement of the policy This is also settled but debatable because of it is I will blame only the advocates. I could blame only the advocates. I never find an advocate appealing for the insurance company to go for a research. He just go to the net search for the latest law read the head notes throw the paper go out. See commencement of the policy is another debatable point where the Supreme Court has held in at least seven cases by a larger bench of three judges even on reference. It is very clear here the claimant has to suffer a lot. I don't understand the logic shift between a policy cancelled and a commencement of policy by the Supreme Court itself. The Supreme Court has been very very magnanimous for a person whose policy has been cancelled but the Supreme Court is not magnanimous when the commencement is postponed to a date after the accident. This paradigm shift I am not able to explain because I am in a big confusion as to why it's so. Later judgment of Supreme Court in 2009 is against the insurance company against the owner and the claimant. So the first case is 1997. It is called Jikubhai's case. This is in all cases of risk covered by the policy issued by the insurer the attachment of risk to an insurer will be in consent with terms of Section 64VB. In the case of a policy of general insurance where the remittance made by the proposer or the policyholder is not realised by the insurer the policy is void ab initio. It is void ab initio. It is not even voidable. It is not even void. It's there. I'll come next. The manner of receipt of payment of premium has undergone a change. These are all the cases. Ram Dayal's judgment Supreme court has overruled. Ram Dayal case say the company is liable. So Ram Dayal is just to be as a part of academic reference only. Jikubhai Sunitha Rathi Sita Bai Bhagawati Devi and finally Porselvi in 2009 all the Supreme – I've taken only Supreme Court judgments and by larger Bench. So if the policy says from 10.4.2016 the policy commence by 0000 hours if the accident takes place on 9th by 8 o'clock in the night though the premium is paid on 8th itself or by 9th itself but there are judgments by one judgement – judge in Madras High Court who has been controversial and has been transferred to Calcutta recently. He has been saying that once the cheque is received the company is liable. That is very much against Section 64VB. So if you follow Section 64VB the risk shall not commence unless the premium is collected or the consideration is paid. Just imagine before the time meant for commencement of the policy there was no policy at all in force. So I would ask one more question which may give you some idea. From 1.1.2016 00 hours the policy commences right 1.1.2016. So it will be finished or completed by 31.12.2016. Okay For example if the insured gives the cheque on 20.12.2015 right 10 days before the date of accident. So out of sympathy or as he said a poor strata you say the company is liable the moment the cheque is issued. So though the policy is issued on 1.1.2016 the accident took place on 28.12.2015 and the

cheque is received on 20.12.2016 if you pre-pone the coverage on 28 itself okay if you make the company liable you pre-pone the coverage from 28.12.2015 right What is the life of the policy One year. Okay I'll just once again. 1.1.2016 the policy commenced. It is going to be ended in 31.12.2016. Okay The premium is paid by a cheque on 20.12.2015. Accident took place on 22.12.2015. Now if you want to advance the coverage into 20th because the cheque is received on 20th. Whether the policy will have 365 days or 375 days If you advance the life of the period by 10 days if an accident takes place on 30.12.2016 imagine if an accident take place on 30.12.2016 when the policy is very much in force as per the schedule where the company will be liable the companies has to compensate two different accident in 375 days. Am I clear So by advancing the policy notionally from the date of receipt of premium you are cutting short the life of the policy by 10 days at the end. 30.12.2016 is the date meant for commencement I think completion of the policy. If the accident takes place a day before the completion original schedule what is the fate of the accident So please don't try to advance the coverage of the policy any date and time before the date mentioned in the policy. Now the Supreme Court says in next judgement Porselvi is latest (2009)15 SCC 116. So you are supposed to see only what is the time and place mentioned in the policy not even a second before the commencement.... Which judgment That's what. All these are by larger bench. This is by Division Bench which we will follow. What we will follow See I have been very sorry to say if I am not liable of... followed this for a high court lawyer. If I was a judge I'd follow only the larger bench because just a minute sir. I had one judgement. I'll request your good self to go through that later. (2005) 2 SCC 673. 2000 5 volume 2 SCC 673. It's on reference by three member judge K.G.Balakrishnan ji Srikrishna ji and Mathur ji Central Board Of Dawoodi Bohra Central Board Of Dawoodi Bohra versus State of Maharashtra. This is a judgement on binding nature of judgement when the strength of the judges are different and on reference. If you have this in your hand your answer automatically. My help is not even required. Can you write [inaudible 00:58:49] Sure sir. It's my – this I expected this question. I brought it because I follow this only when I am confronting lot of contradictory judgment by coequal bench by Supreme Court. I have got highest regard being an advocate to Supreme Court but at times they are fallible at times. So it is beyond a human error to be always perfect. It is final but not fallible. It is not fallible because it is final. You know it very well. So please don't go by only judgments. Go to the Act first. Apply the facts and go to the judgements and find the -- what is called the array of year and the strength of the court. For example that's what I say. I've got judgements which are by three-member judge on two by reference. Jikubhai Sita Bai Sabina Lakhi are there. When their subsequent Supreme Court says otherwise as an advocate who believes in rule of law who has got highest regard for the judicial I can say follow the latest larger bench judgment. Sir the judgment that is ... regarding the law of... The binding nature of law precedence. Yeah.

SESSION 6 – CIVIL LAW AND PROCEDURES APPLICABLE TO MACT CASES

Namaskar to all of you again today. I'm sure all of you know the precise meaning of the word Namaskar. You've heard me say it before or you know it otherwise? Yes. Know it otherwise. Are

you heard me say before, let me put it? And what does it represent from Gujarat side, let me understand It is a just respect to the person...Okay. That is nearly correct. Anybody else from the eastern side, or southern side, or northern side? Okay. I can say that it's a just respect in a sense that he surrenders himself to... No. That – that your earlier answer was a little more correct. Lot of people in the country tend to treat namaskar as the Hindi equivalent of good morning, good day, good evening greetings, but if you go to the true meaning, there is more to it that has the philosophy that the God almighty resides in the human being, and when we say namaskar to another human being, we are actually saluting the divine in that human being. When it comes to, let me put it, if I meet a friend at a club, I may say namaskar to him, but my namaskar means only greetings, but when I address judicial officers to whom the 17,000 of you have been bestowed with this divine power of giving justice in the country, my namaskar means a double salute to the divine in law. And I hope you all live up to it. That's why I am here. Okay. Again, today, I have my own way of addressing as you must have felt it yesterday. I am not going to go so much on what is the case law. You can address. Lawyers will argue before you. You can also access every day new cases come, you have to follow them. I am more interested in two things: (a) explaining certain fundamentals, which I feel if you were to deploy, you would be able to get a quicker and a more accurate justice delivery in the MACT cases. Now there is also another part, and that other part, I briefly touched yesterday, when I said, our first interest is prevention; second is attention; and only third is compensation. So both for prevention, attention and also for fairer and quicker compensation, there are certain novel ideas which I want to put forward, and I make it clear at the outset, it is for your consideration. It is not the existing law. It is only for your consideration, because I feel the real law will develop only when these thoughts open up. It is my request to every judicial officer in the country, including your good self present with me today that 2, 3% of your intellectual energy, you must reserve, and keep a diary separately on what is missing with our substantive law, with our procedural law, and how that can be improved. This will help (a) you do your existing tasks far better, (b) when the opportunity comes, you can make the best use of it, and (c) one day if that diary gets information, that diary will actually contain the gold mine for giving justice in this country. So make a separate diary. Once a week, note down one or two pages what you like. Some of my old diaries were much younger days are still paper is cracking, but still they are with me 46 years back. You begin a separate diary for your new ideas of what you feel could be a substantive law problem, procedural law problem. So many times as you will -- when you preside over courts, you feel a party wants to speak. Just to keep him happy, you allow the party a few minutes, but you feel yes, in your mind what the party is saying is right, but this is not my power. I am not asking you to go beyond your power in any way, or what is the existing rules or practices, or what innovation you cannot have, but that does not stop you from making a diary. So next time there is a seminar or whether it is your state academy, or your judicial Academy here, or the Bhopal or anywhere, at least that is there. Your thought process will be guided. Second, sorry, third, what happens is the efficiency in justice delivery, whether it is A subject or B subject or C subject comes from innovation. We have had no innovation in many of our fields of justice delivery for the last very many years, and that's exactly what I'm working on only to introduce but

once again, this is not the law today. A sheet has been distributed this morning on the traffic court system as could be possible. It was distributed yesterday also, but that was a little too small, so I requested the -- this one in your hand. So I requested the Academy to make a larger print which I sent from Delhi. They did it and now it is in your hands today. Yesterday while this is being distributed, I pointed out that we cannot prevent deaths, injuries, accidents, near miss until we go to the root and look to the basic behaviour. That I pointed out yesterday. Simply compensating those who are injured and ignoring about others is not doing justice to the masses. We are feeling, we as a nation are feeling in our duty, I am not talking of you and me. Now this is the proposed traffic court system. I will like to take you through this as a system. If a traffic violation unsafe behaviour generally occurs, electronic system, which in this book I have given at a later part not distributed, there is a fine, and the fine has to be sufficient to deter if paid closed penalty points recorded, if contested it goes to the traffic officer. He is not a judicial officer. I don't want CRPC to be applicable because if once a CRPC becomes applicable, even as a summary of offence, then the whole thing goes. Then there is a limited revision to the traffic magistrate. Now this is where the judicial officer comes in. If it appears also to call for imprisonment, it is sent to the Directorate of Road Safety Prosecution who sends it to again criminal to the traffic magistrate; accident with no injury, sends it to the traffic magistrate; if there is a accident with injury and death, it goes to MAMA. Now MAMA as a name may sound a little amusing to some especially from North India. It may be practical for those who actually need legal aid, but it is by sheer chance Motor Accident Mediation Authority. Now it's a very formal title, but the short form turned out to be a little adding the humour to it, but imagine yourself, put yourself in the mind and the shoes of the victim. He will say, "Chalo, MAMA called. Chalo rahat milegi." Why I have proposed this MAMA, and a copy of this has been distributed to you gentlemen, and we come to this fact, and kindly come on this to page 3, sorry, 370, one minute, 369, 369, topic 12, Motor Accident Mediation Authority. It's okay. Certain questions are posed. We talk of Lok Adalat, but Lok Adalat is held after how many months or years? Let us be honest to ourselves. Most of the Lok Adalats are more to clear the areas. There is very little Lok Adalat to be found in the first few weeks, like yesterday at dinner one of you participants asked me. Sir, nowadays in Delhi we are having daily Lok Adalats. That is true. So go to these ... That is true, but that is true, but again, that is Delhi. I am talking all India here. Now I had ... All right. Okay. We have Very good. I'm happy to note. I'm happy to note, but this is all in the last few years. Yes, sir. How the people have suffered over the past you know it. I know it, but even what is happening today, it is my belief rightly or wrongly, that this topic 12, if you people read, you can improve upon what is happening today, and you can improve upon what I have written. We have undergone 40 hours of training as a mediator. Very good.

Most of us. Very good. So topic 12, if you read and you yourself develop further, we can one day have a lot of relief within a few weeks. Now there are two ways of looking at it. Now let's take the conventional way of deciding a MACT case the conventional way. Ultimately, when you decide, the final stage you apply your mind, there is a lot of processing that has gone on from stage 1. Filing a claim, collect notice, written statement, replication, summoning documents, all these things have gone on. Now does it really, all that processing, does it really need that time of

a judicial officer of your rank? I personally feel it does not. It can be done at a more informal level at the Mediation Authority. And what happens is, if it is done with guidance at the Mediation Authority, there is, I feel, a substantial chance it will be settled there and then. It will not come to you for adjudication, but systems for this have to be in place. Today under the existing Legal Services Authorities Act, the mediation centres have been established. In some states, they are effective. In some states, they could be more effective. But what I am saying is we need a special Motor Accident Mediation Authority, a basic design I have given here, and it is my appeal to all of you to develop this design further. If there is a fault, delete it. If further design can be developed, please go ahead. That is giving real justice to the claimants in the shortest of time. Now when you decide the case finally, you take up any 10 judgements that you have given yourself, and I must straight away here refer to the book material that has been distributed by the Academy for today to all of you. I am referring to this one. I went through it earlier this morning, and I found it an excellent compilation. It is an excellent compilation, but I want you to go a little further and work on this. Now may I request you to have this in your hand now? This has been divided over 8 chapters and 64 items, articles or mostly judgements. And -- sorry? 69. And the best part is the relevant portion has been picked up and correctly as I went through it, so it makes it much easier, sometimes very long judgements, it becomes difficult with the so much load of work in your courts to find out which is a relevant portion. So you have it readymade. Now let us take any page. Open any page and we will start from there. I'll leave the page choice to you. Yes. Let me have the judicial officer in front here. Any page from this take, we will start from there. You choose the page. 54. All right. 54. Let us turn. Now 54 is the Supreme Court Decision M. K. Gopinathan. Now let us have, come on page 55. At the middle, the question is raised formulated by the Supreme Court. So may I request you to kindly put a sideline and use the letters Q and N to indicate question here, like I have done? Just QN with a pencil on the side. Now the next line, same page 55, in the circumstances, taking into consideration the undisputed fact of his qualification -- now his qualification was an evidentiary fact that was not disputed. So let us mark it EF, evidentiary fact 1 -- we feel just and reasonable to consider his income at Rs. 8,000/-. Now this is application of the evident of the principle of law, which is implicit in just end reasonable. So you have the principle of law that if this is the situation, this should be the principle of law. Readily you are able to identify, this part is operative, which are not relevant. Okay. So now let me ask somebody else to choose another page from this compilation, and then I'll begin on that because ultimately, if it is only MACT, and you are able to mark out the principles of law, the question, the material fact and the evidentiary fact in this. 63. 63, come. Now 63 is again the facts are given, Perumal vs Ambika. Now the decision is the tribunal discarded the radiologist report of such and such college on the ground that the claimant had not pleaded in his claim petition about the treatment at that College. Appellant did not specifically plead he was treated at such and such college hospital. However, in our considered view, this can not be taken as a ground to discard the radiologist report of the college. Rather, this seems to be the inadvertence and drafting the claim as confusion. So the principle laid down is it is not necessary for the pleadings in such a case to be as detailed and accurate as may be in other similar cases. So this is the principle of law. So let us let me mark it in

my copy that this is the principle of appreciating the pleadings which has been laid down, principle of law for pleadings. Now we go further. In our view that Tribunal and the High Court were not right in brushing aside the evidence of VW so and so, and the disability certificate and have committed an error, that he has contained only simple injuries. Now this is appreciation of evidence finding of fact. So what is the principle for finding of the fact is what they have noted here. Then it goes further. Article 136 doesn't relate to you, but that next line would. Erred in ignoring material evidence, which means you are not to ignore material evidence. The injured is to be compensated for his disability and loss and also for loss of earning due to his inability. This whole idea is to put the claimant in position as he was prior to the accident. I ask my friends here, what are these last three lines? These last three lines, what are they? Okay. Please, please, what are the last three lines? To put the claimant in a position where he was... No, but that is right, that is – but what are these lines? No. Application. Application. No. This is the principle of law. Principle of law. Earlier line was application. Now the principle of law is stated here, as I said, fact, law and application of law. This comes in the number two. The injured is to be compensated for his permanent disability and also for loss of earning due to his inability. The whole idea is to put the claimant in the same position as he was prior to the accident. If I take you back to what I yesterday, this picture, at number 2, I had said principle of law. So this line is to be marked principle of law. It is not appreciation of evidence. It is not evidentiary fact. It is not material fact. It is just principle of law, which you can use in any case. Okay. Next page, anybody who like to come forward with? Yes, ask me. Let us do this exercise. 71. Very well. 71. Now 71, I think I will skip 71 for a reason. It's an article. So may I request to – let's go to gentleman. 171. 171. Come. Now 171 is a slightly old case of 12-year-old, with a three-judge judgement. Now this, what does it do? It interprets 163A. When a higher court, especially the Supreme Court interprets a provision of law, it comes in what I said yesterday if you have principles of law and its elements as called from the statute and case law. So the first part is again, principle of law as interpreted becomes the principle. That is what we have to apply for the next stage. Then again, the next para, it may be true, provides for an action. The court is rejecting an argument, but continuing to hold what is the principal one. Then it goes further. Although the Act is a beneficial one, and thus deserves liberal consideration with a view to implementing the legislative intent, but it is right that where such beneficial legislation has a scheme of its own, and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope on the pretext of extending the statutory benefit to those who are not covered thereby. Now again, I ask my friends here, what is this? Yes. Principle of law. Correct. This is the principle of law. And the principle of law is, as I read this line, I just read it just now, an important principle that yes, the Act is beneficial, but that beneficial, you cannot take it so wide so that the sympathy, which is evoked in you in the courtroom goes against the scheme of that. They say yes, read it beneficially, but do it within the constraints of law and don't let your emotions of sympathy overtake. So that's again a principle of law, but this principle of law has a touch of application of law to facts also, because you are applying it to a fact. So some principle of law like this one have that hue as well. Next, any other? Let us try two, three more. I hope this pattern is – you are finding this pattern a little annoyed, unusual or -- but

you find it useful or not? If you don't, please tell me? You see, I will be the happiest man when I go back two hours later from here, and I feel that I have delivered maximum now, not compensation, but dissemination to you people and for which I have no bounds. I'm not bound by this principle. 39, page number 39. 39. Come. HDFC Bank, Kumari Reshma. Now facts are stated. Now as the facts have been stated, the decision is there. I'm skipping the page 40 where all the earlier principles have been noticed. Now at page 40 at the bottom, on a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of policy under which the insurer can seek exoneration. So all these cases have been now collected and two principles have been laid down. I will call it the first principle at the bottom of page 40, and the second is the insurer -- that there should be exception will be only where there is violation of the terms of the policy under which the insurer can seek. So two principles are laid down. Then again, if you come one paragraph further in the instant case, the predecessor-in-interest of the appellant, now what is this? This is the item number 3, application of law to the facts as established. This is what the Honourable Supreme Court has done here. In fact, I had requested Shruthi that of course we don't -- I don't have that much time if I was going by the evening flight, I can't because I have to go tomorrow morning to Bangladesh. I said, let us assign three colours, rather four colours, principle of law, sorry, let us have fact, evidentiary fact, the principle of law and application of law to the facts, and that how beautiful this has been prepared, if we were to work together for two days to only mark it, we would have mastered a lot of our task on the motor accident law as principle of law, as application of law, as material facts and not only that, it will be an exercise which you can do, which will help you decide cases in your other jurisdictions also far quicker and better. That's why I'm bringing a few pages. Okay, next page. 57.57. And which is the one you said? She said 57. Somebody said back? 169.Okay, 57 first. 57 is no page.56.56.169.Sorry.169.No, no, this lady asked me. Yes, madam.56, 56.56.56, okay. Very Well, one minute. Now again, kindly come to page 57. While dealing with a claim petition in terms of section 166 of the Motor Vehicles Act, a Tribunal stricto sensu is not bound by the pleadings of the parties. I want to ask you all a question and related and this is right. This is the correct principle which you have to follow, principle of law in my copy. Which is the field of law where the party is most strictly bound by the pleadings?..No. Election.Correct.Election.

Election, correct. Election law is one field of law, where the pleadings have to be so precise and accurate, and let me also tell you a little of personal background. When I was just started profession, my father taught me to give me one judgement in 1971 Supreme Court. I think the Roop Narayan vs some case. I'll just -- Roop Narayan, Justice Hegde's judgement in 1970, can you Google it? Justice K. S. Hegde to R Roop Narayan. It's from our this place only Indore area.

Now, if you read that judgement, which I read at that time, how the facts, law and application of law have been interwoven by the Supreme Court? Beautiful reading, but then 71 elections, a lot of these cases went to Supreme Court where the first appeal would go to the Supreme Court, and the Supreme Court has discussed pleadings principle and evidentiary facts

inference growing in those election cases. So I never practised election law. I've never appeared in a single election law, but reading those election cases from the Supreme Court in the early 70s is where I learnt my art of what exactly is evidence and how to make the best of it, which I then used in life in the Narayan Vs Roop Narayan. That is the case, 1971, Justice K. S. Hegde. Okay. Now we continue with this. Now come on the bottom, and I must again, last paragraph, sorry, second last that the learned Tribunal, in our opinion, has rightly proceeded on the basis that there was no reason to falsely implicate 2 and 3. Again, a guideline for you to appreciate fact. This is not a principle of law. This is a guideline from the honourable Supreme Court, how to appreciate the fact whether he is right or not. Now last paragraph, the Tribunal has rightly taken a holistic view of the matter. It is necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Again, a guideline on how to appreciate fact. So it is not -- this sentence is not a law of compensation, but it's a law of how a principle of law, how to appreciate the evidence in such matters and do your task of fact finding, which is item 1. Yes, next, any other page please? 169.1?69.169,yes. Actually, it should be 168. Yes. Now on page 169, now this is the principle of law for application. After considering the decision of the court in Santosh Devi and Rajesh so and so, we are of the opinion that it is the duty of a court to fix a just compensation. At the time of fixing just such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation. A overall statement of law on what is just and fair compensation, and not to be done by technicalities as understatement or overstatement is also implicit in it. Now--Sir, I think it has aYes, very good. matter-- Yes. Was not said by theYes. So how can the claimant just do that? You see you have to, again, what the day you decide a case, now let us put it a judicial officer at your rank decides the case within what is a three, two-judge judgement directing point by the Supreme Court, you follow that. You decide. A year later that judgement is set aside, and replaced by a three-judge bench, you know, so whenever you decide next, you follow the latest three-judge bench. Yes, if you were to miss out on the three-judge bench and go on two-judge bench, then you are in error. But so long as you have taken the latest case law and kept abreast, that is why I say, keep your own separate diary of substantive law. Make a note there, and also the notes what you find missing or not missing. Again, today what has happened is ever since these computers and photocopiers have come in [inaudible 00:37:20], lawyers have a habit all right, make out a big fat bundle. Yes, [inaudible 00:37:28]. What do you

do? Let me ask you for my enlightenment. When you were given a bundle, what do you do? We give normally, give long enrolment so that we can go through it, but in the mean time you can go through. I think--Any change ...don't see, sir, don't write. Okay. Now what happened is with bundles of judgements, and written arguments running into 100 pages and all, questions were asked to meet this at this and other academies. So I said very simple. Mister Lawyer, please, this file will remain in the courtroom. I will read it all at home. Give me extra copy. Then you give me. No lawyer will say no to give extra copy, and once he has said yes, I will give, I said "Do one more favour. Take a highlighter and mark out portions." Later some judicial officer tried this. And later he called me up to tell me that the lawyer said, "I'm sorry. I have given too much unnecessary material." The judicial officer asked that lawyer in the court, then why have you given it? "Sir, I had given without reading. Now that because to mark it, I had to read it, I have now shortened it." So you can try this technique. Ask for an extra copy, and ask them to highlight it, and you will have the thing. A third thing, not in MACT jurisdiction, but in other jurisdictions is all right, please also make out a table of contents or the table of points, and on the right margin, right the number. Any written argument that is given will shrink. Okay. Yes. Next, next judgement please? Any page number? 19.19. Just 19, let me--19. 19. I am just going through it for a minute, and then I'll be able to speak. Which page, sir? 19, somebody asked me, and I'm just reading this. Now here two principles have been taken of law. One is contributory negligence and second is extent of the compensation disability depending on the avocation of the person. Let us put it on a little -- it's a little -- not a nice way of putting it, but I'm just saying it only to explain the point. Most of us are right-hand. We write with the right hand, but I've seen at least there is one intern working with me for quite some time who writes with the left hand. Now if an injury to his left hand occurs, it is a greater disability than a injury to say my left hand, because he is a lefty in writing. So these are the sometimes the ground-level realities and the truths you have to keep in mind and cover in the just and fair compensation. If in an accident a person is injured, or let us take identical accidents, and we take three -- three -- four persons who are injured, two in the left hand and two in the right hand, and they can't use that hand. Now will the -- as we go, the meaning of the word just and fair compensation, will the compensation be same in all the cases, or should it vary? It should vary.

Now this is a principle of law, which you are developing as MACTs, and your development will then go before the High Court and ultimately before the Supreme Court for consideration. I have not yet -- maybe some of you can enlighten me -- come across a judgement, which considers a difference between left hand and right hand, and also reverses it for a lefty vis-a-vis a normal righty. But this -- yes, but the point put forward by me to you today is that all these questions come up, and that is where you have to apply your mind when the court said holistic manner, you have to do it just and fair, do not travel beyond, keep within limits, and strike a balance and that is how you build up the quality in your own judgements. Yes, next page. I have a question Please, yes.... damages to vehicle 10,000. Yes. So I know Section 147 ... what isI don't think I'll be competent to answer this. I mean, I must fairly say. I'll not be competent. Yes, next judgment please, because I am confining to the basic principles as my apologies. Sir, I have a doubt. Yes. On contributory negligence. On? On contributory negligence. Yes. What happens in a particular case

that the lawyerthe payment both the vehicles that is claimant's vehicle and the vehicle. Then he argues when there was a case of head on collision, it becomes a case of contributory negligence.Now there are one part. If the head on took place--With the ...Yes, you're right there, or one side, or the other side that will make the difference whose negligence it is. No, you have specific evidence that what due to the negligent act of one of the drivers, the accident has occurred.Yes. but a simple reasoning the person from that there was a head on collision without any additional material. No, it is not enough. Will it be suffice?No, it will not suffice.For the act of contributory negligence?It will not suffice for the simple reason you will have to look at the location where the on the road width where it occurred. In this recently Kerala High CourtYes.Final report by the investigating officer under Section 173 CRPC is a evidence.Yes, yes. You are going to have two vehicles. Yes. Which vehicle is liable? Yes.For example, if has to accept the final report by the investigating officer. Correct. Now--They have the most important benefit Correct. Now unfortunately, now I will deviate from the subject for a while because of this. Unfortunately, in our country, there is so much vagueness, and also lack of I will just use the word as academic integrity in what is the report at that time. Unfortunately, US judicial officers have no way to go behind that. You have to go by what the report is. Separately, that is why I have been repeatedly urging at other reform road safety seminars and other reform seminars that unless we recognize behaviour followed by near miss followed by other accidents, we will not be able to prevent. Compensation is not our goal. Our real goal is prevention. That is the purpose. Of course, compensate, we will where we can't prevent. But in this context one thing more may I request you, my friends here to have this portion of my book that is done, and I would like to take you to one page here. Page 339, I've given full details on how this process can be improved. It is already one year and four months. Nothing has happened on this. That's a different matter. 339. I have put down my views on what should be the proper approach for investigation, the standard procedure and the equipment. And interestingly, come to para 55, the AIO must note the mobile telephone being carried by the driver of the vehicle owner, of the victim and even the occupants, the witnesses. Why? If the mobile number is noted, the question of the fake witness coming in later, I saw this accident, he was driving rashly, that is ruled out because today, mobile number is a straight indicator of where is the location, because of the tower with which it is communicating. And incidentally, I will just again on the mobile phone, I'll come up two minutes later. Now kindly come further on page 341. I have written something in para 67, page 341. I like your views on that whether I am right or not. If there is an extra, she can also have. Para 67 on page 341. What is your view? Am I right, or am I wrong? Right. Yeah, has incorporated certain provision in the effect of recording the statement of theThat is--With your recording.Yea. Now kindly have further. This is an accident investigation report, what it should contain, but when it comes to content, I do not know, but you can perhaps use this whenever you happen to have the evidence of the – for you to ask the necessary questions from the parties to get to the truth of the matter. One more sentence here. Come to page 342, para 73. The AIO standing at the spot after an accident and hearing the crowd present, most of them would refuse to be witnesses. This is also a ground reality. Can you spend a few minutes thinking on measures that could have prevented the accident

apart from blaming the high speed, and rash and negligent driving, and then report to a central body? But then again this is not your field. I must put that caveat, but this is where we find that most of the witnesses whom the IO record are not the real - may not be the real witnesses, but that's a fact of life. And those who are the real witnesses, at least if he could make his own report to a central body, let us forget this. At this particular spot at this location, this accident occurred for this reason, please do this correction of the road, that is what I have written in para 74. The same can even be given coordinates on a satellite image map to make a database of accident hotspots. Suggestions from many AIOs can be compiled and used as feedback to change the road design or make other changes to increase safety. Then the other parts of investigation, they are mostly relating to law reform. One more question I'll address straight away. Somebody asked me yesterday at dinner informally that what about interim compensation, because that is what is really required, and may I request you to have a look at – just one minute, page 357. You can mark this some interim compensation, and also at the bottom, there is topic 12, subtopic 6. You can write that word page 402. After subtopic 6 you can make a note page 402, and turn to page 402. Page 402, there is a subtopic 6. To give only the basics of food, clothing and education from day one and stop it after one year when wait against delay is less cruel than to make somebody wait for years and then give millions. Now what is the practice in your courts are interim compensation. Some small amount per month. But the problem is, if you give out a large amount, there are others to takeaway. No practice.we are giving. In Delhi. 25,000 for permanent disability ... Section 140. Okay. Now that is Delhi. Everywhere. Everywhere. Everywhere. Okay. No, no. This is like – please. What I'm trying to figure out is when a case starts, it is not a full payable under law that must be paid the first day. No. I am talking – I am provoking your thought to question only enough to meet the kitchen expenses and the school fees for children. If only that short amount can be given per month for six months, do you think that would do a little justice? That is what I am posing, and how that can be achieved. I mean, it's not. But it would not be feasible because we have lot of pendency of cases thatone case every month, they have 2,000 cases increased just-

- That is more of--Okay, fair enough. That is more ofOkay. What I proposed was, but this of course will require action at other fronts also, and it is not within your power. This can be likewise what we have been called a permanent disability. Likewise it is the initiation of these. No, you see what happens is there is a difficulty. At the very initiation-- 168. That's why. At the very initiation, you do not know, and you cannot know whether it is a genuine case or a fake case. And if you do it the first day, we will have such a load of fake cases that, I mean, human nature we cannot ignore. What my view is and it is not the law, it has to develop, that in all these cases, you can ask, again, it has to be the High Court who has to speak to a bank, it is not at your court that can do it, to give a series of, or the insurance company can do it, to give post dated cheques of amounts I am talking as little as three - five thousand rupees a month for five months, post dated cheques. You are right when you said you can't fix a case every month. That part is correct, but till that process is started and completed, I would like you to think of ways on how we can give the very basics for the first few months, and I have given the detailed reasoning here, which you can read and develop further in your thoughts, and then you can speak to your concerned

High Court. Statutory amendment is ... according to Section 140--Yes. There is statutory limit.50,000You see if that statutory limit of 50,000 is dispersed on the first day, we will be loaded with fake cases. No, 140 says--... liability.No, sir, no, I think ...documents along with the claim. That is the problem, correct. That is the problem we are facing. That is the problem.

We cannot hold a ...to see whether this is a genuine case or not. That is a problem, and I'll come to it after a--But in a case wherein Apex Court direction of sending an investigating ...relevant papers with the concernedYes.That can be routine Very well.To implement your idea, but we can do maximum we can make a fixed deposit of their 25,000, 50,000 rupees, and that interest can be paid. 5,000, 10,000 you may give.What I would like you all to do, I am very happy to note the response. I would like you-- But can we do so in the excess of – maybe we cannot do it.No. I must say so. You cannot. I would like you-- It cannot be right ...Yes. It cannot be kept-- Now I just tell that let's go back step-by-step. We are-- That is the main purpose of Section 140. I said let us now proceed. Let us proceed wherever you have an idea, and that idea develop. Now there is no bar on your speaking to your High Court in that connection. There is no bar that whosoever is the judge hearing MACT appeals, or the Chief Justice as the case maybe or the protocol maybe in a particular state, you can speak that look, we as MACT feel this difficulty. Please kindly give us guidance. You can ask your state judicial Academy. They can write further to the High Court. But unless you recognise this little intellectual task by you that this you must point out the difficulty, give your reasons and seek guidance. Today you have to follow the law, whichever is laid. Now, incidentally, on question of payment, you kindly come on page 569, topic 16, paying out the compensation. solar company says that the policy is okay, village is okay, and the case is [inaudible 01:00:00] and we don't have any ... Then after making formal calculations that we will be awarding about 40 lakhs to the deceased family. Please. So can you award 5 lakhs initially, that 5 lakhs amount should be given initially, and then after making the judgement?No, I will not say 5 lakhs initially. I would certainly say if it's a 50 lakh matter, at least let 20,000, tell the insurance company give post dated cheques of -- because if you give the whole amount once, it is lost. So if it is post dated cheques, say it is you are passing this order in April, so it--If elements are major then? Even then, even then, because as most of the claimants in this field are not formidable enough to protect their interest. They need additional protection, and that is why topic 16 on page--No, sir, I understand that. Even when we are awarding the

Yes. Say I have 10 lakhs. Yes. Our High Court estimates the entire award, and nothing is to the claimant. The High--... Yes, yes.They areThey are?Suppose I am awarding rupees 10 lakhs. Okay. Finally, by judgement.Okay. The High Court is ...I have not followed the last sentence please. The claimant does not get anything. Then maybe the insurance company applies for theNo, that is I made no comment on what the High Court does. Not so because in Delhi no, this is a question of ... Yes. Even the final, they are not getting--If the High Court has stayed, I make no comment here.That's what we are suggested, and now they are releasing some amount, 50%. That is one part, but what I am pointing out is if you gentlemen, because unfortunately, this was circulated much later, if you read our topic 16, I have proposed a system instead of giving a fixed amount, like we have, like all of you know how people purchase

houses on mortgage. There is a reverse mortgage, so this pattern of mind, I've developed a system of reverse NOT certificate that if a child is 14 years old, he will get X amount in his 20 per month, so his education is done, matter over. Nobody to steal that money. And in fact, Justice Raveendran in one judgement has approved in very short words approved of this approach. I had given him a copy of this. This is topic 16 paying out the compensation. Okay, we will have a short break because then five – well, we keep it very short 5, 10 minutes, and I'd like to fill any questions on -- and I also like you to apply your mind. This is only for further development, not for education, not for implementation today. So 5 minute break.

SESSION 7: TOOLS AND TECHNIQUES TO EXPEDITE MACT CASES

In the next case to do it a little better when it comes to identify the material facts the evidentiary facts and others your speed will improve now yesterday this was distributed civil litigation and new approach. Have you turned through this or should I take you through this Now what you do is come to page 37 I'll take high speed through this first is enforce responsible pleadings now you come to next page documents interrogatories and directions on page 39 there is an important line in Ram Rameshwari Nirmala Devi you have read this judgment on civil law this judgment gives lot of material. The SC says the court is resolved to discovery and protection of documents at the earliest to the object now three column list of events which is next I explained yesterday is on page 40 you have Delhi HC judgment to support it. Page 42 6.31 the utility of Section 30 CPC and it is 110 years old but how many orders are passed under it. Let me ask you who are in judicial services for more than 10 years how often you have passed under Section 30 lawyers don't ask they don't submit naturally you won't pass and now I was doing as a part of my research experiment on certain retired judicial officers. I said let us open a file which is decided and I made three copies and let us do some experimentation for my research I read the judgment and I wrote out five questions in that case and I asked those judicial officers who delivered the judgment that if you asked these 5 question on affidavit 10 years back when this case started would this case have gone on And each one agreed that the case had been finished that day only now those questions have to be identified I am not saying you do it yourself ask the lawyers to point out 3-4 basic questions you want me to ask I have jurisdiction under Section 30 CPC and this judgment gives me the power Maria Margeritta have you read Para 42 6.31 this judgment is already 4 years old but I think now you should start applying it daily. It will speed up your case then record the statement of the parties framing the issues page 44 please and then carefully framed the issues then on page 45 use that tool of interim cost to ensure propriety in conduct and waste of resources. Final arguments in writing there is a decision of Delhi HC in Kiran Chabra which I have copied in Para 6.55 it is very short judgment and you can access it on internet Kiran Chabra v Pawan Kumar Jain then at the end restitution whatever be the jurisdiction SC has recognized the full power with you and have given the details here don't miss out the restitution and then on page 50 there is realistic cost. Now I would request you to come at page 53 during the course of my research I discovered that there are three wrongs in our society that take place one is when the original wrong take place see I am

driving rashly and I hit somebody that is first wrong second is I can also say I'll take you to hospital I am sorry and I'll compensate you but we say no no teri galti hai although I am at fault that is wrong two wrong three occurs before the courts when a person put forwards a false claim false material facts false denial of the true facts concealment of the fact concealment of documents forged documents and all other wrongs as you see in your courts. They know they have no answer somebody has died I have to go there adjournment 100s of excuses I remember in one case in Delhi HC the old case every time adjournment and this time order was and the lawyer was very sick and he can't come so adjourned at that time i was practicing appearing for the defendant judge turned the file and said no I am adjourning it then I started arguing they told me to sit down. The order was very interesting he asked the lawyer appearing that are you the regular junior in his office or are you just the proxy for somebody he said no I am regular junior so the judge said okay. The order was Mr. so and so was stated to be sick and was unable to come to the court and therefore adjournment was requested request vehemently opposed by the counsel of defendant that was myself adjournment still granted but now the next part is beautiful part adjournment granted for today matter to remain on board the day Mr. so and so is recovered and is able to come to the court the case will be taken in the morning at 10:30 am now effectively the adjournment was granted but two days later the lawyer says and appear I am sorry I am well now but I am still ill so the judge said okay then my order stand and you go home if you are in court premises I can't have you well for other cases and not well for this case before me he said I am sorry and ultimately 5th day and it got finished within 1 hour partly because I have prepared my notes the list of dates the 3 column of list of dates and page number also. I gave it to the judge and the questions were answered I still remember it. He just saw through it and asked the question to plaintiff judgment is given. So this is how you have to recognize the third wrong and when the third wrong is committed before you and the case is finally decided come to page 55 please more readily order prosecution for purgery in pleadings how much purgery Plenty But wherever there is open and shut case please take action the word must spread that litigants have no right to tell the courts a wrong thing. SO this is how you can speed up. I will now ask any questions on the general procedures or MACT procedures I will answer and then I leave after 10 minutes.Sir insurance company are not filing the counter to set aside the ex- party order the claimant file a petition on affidavit and affidavit is sworn by himself alone. Can the petition be entertained See sometimes this is a valid question but it needs a tactful answer a tactful approach by the court by the court I would say instead of going into the question whether the affidavit is sufficient or not sufficient. You say I will consider it later and you bring your regional manager affidavit also so you don't decide it whether it is valid or not valid. You'll say bring one more affidavit of the regional manager I will consider now depending upon what the affidavit is and how much time has gone by you say alright subject to so much cost payment and cost should be substantially heavy and make sure in that order that the cost should be paid by the payee's account cheque in favor of the claimant not the cash paid in court because there is convention that cost does not reach the party. The very pathetic situation is that petitioner has gone to ...no objection is raised and the petition is allowed. Come again pleaseThe petitioner counsel the claimant... no objection and

You can say so he has made that endorsement but since public time and court resources are involved it is only proper that I asked the manager to file this affidavit and then I will consider and then say payment to be made or cost by pay's account directly to the claimants. Yes next question please. Next question the petitioner filed a petition but in course of time can he convert it into 166 I would like to avoid answering as I am not sure today...you can discuss over lunch...Cannot be converted. Okay next question please..... Future prospects of the person now that depends upon the latest law laid down my view as an academician may be different but I don't want to impose my views. You have to go whatever law is there what have been laid down by SC or HC otherwise my personal view. One thing more I want to say please. If you really want to develop motor accident claim jurisprudence please make a list of in your diary of the material facts whether they come in dispute or not in disputes and if so which are the evidentiary facts which need to be proved or not be proved plus what are the principle documents if you have this list ready in your hand you can direct the parties please produce these documents and I can proceed in full speed because many times the parties do not know which document the court needs or the court leaves it to the party or the party conceals the documents with the results and the result could be erroneous so if you compile your own list of what are the documents and you can make amendments with pencil in that list in a matter of few months 10-12 cases you will have the fair idea what are the material facts and other relevant facts. What do you feel will this make you quicker or no So you have your own. Okay with that I'll take your leave thank you for listening to me and I would say thank you for helping in my mission through your good offices to deliver the justice in this country and Namaskar.

I will take this moment as Sir is going it would not be fair without saying and commending him for the kind of mission he takes up and he is always here whenever we ask him and he does not take a penny and I think we should appreciate what Sir is doing. Thank you so much Sir. Thank you Okay we will go for lunch and we can come back at 2. the earlier we start earlier we can go okay so 2'o clock.

SESSION 8 – UNDERSTANDING DISABILITY

good afternoon my name is srilatha juvva and i care about people i care about an inclusive society a society which is just fair which respects promotes and fosters wellbeing of people min the planet i only happen to teach in the tata institute of social sciences so i would like you to know me as a human being first before you get to know what my professional profile is all about i have done my masters in social work and thereafter i went on to specialise in psychiatric social work from nimhans in bangalore after which i have been teaching at the tat institute of social sciences at the center for disability studies and action the center for disability studies started about 8 years ago in the tata institute of social sciences about 10 years ago in the tata institute of social sciences we offer a master program where we train young students and professionals to eb disability social workers thats why i am here so that and i thought it is a very interesting way of looking at mact

and disability and i really congratulate you shruti on that well i am to talk on disability and what do we mean by disability before we understand what disability i want you to i want us to quickly i have been given the tough task of looking at a lunch session post lunch one of the most difficult session for the participants as well as the resource person so because it is a huge challenge and i am up to a challenge i hope you guys are up to the challenge too it is important we need to keep our brains sharp so we need to eat too pardon... you know the lunch is over we begin the session now so let us take a moment to look at what it is that i care about what do i as an individual care about now the teacher in me says i cannot sit and lecture so pardon me if you see me walking around flailing my hands so what is it that we care about what do i as a human being care about can we just what do we burn for sorry humanity yes and when we talk of humanity we are talking about .. we are talking about justice as in fairness we are talking about dignity we are talking about respect any other aspect quality that you care about pardon it is good you care something about yourself what is that thing that you health as in well being you care about well being of yourself when you care about the well being of yourself and myself and i care about myself fair and just manner i also do the same thing to others it also applies to me your health and well being you also care about the health and well being of others thank you what else do we care about in this room what is behind that status for you what does status mean to you is it car house jewellery what is it or is it something beyond which actually makes .. about human beings and human beings and planet some one said something here ... yes so that is humanity nurture and foster and bring out humanity in me and thereby bring that out in others ... whether it is to my self my environment happy it is ... that is right every body happy... so how we manifest that is a different issue but we care deeply about peace happiness cheer contentment so all these ... and that is why we are here in this room because we care about people we care about the environment having.. well being fairness justice respect and others we have a job to do life gives us the opportunity to manifest the greatness that we have the greatness that we all have are these universal values besides car house that is also important but besides that the core purpose that we are here in this room today we all occupy positions of power and authority today is because we care about these values and life gives us an opportunity to manifest these values so that we serve people we serve ourselves and we serve the universe in doing so so i would like to begin with that because unless i know what i care about im not going to be sensitive of needs of others right and today we are going to talk about a group of people who require that sensitivity and these are people with disability so lets have a little fun exercise about what disability is ok before i would like to share this quote with you it says when you know who you are when your mission is clear and you burn with the inner fire of unbreakable will no cold can touch your heart no deluge can dampen your purpose this was said by chief seattle chief seattle was a native american tribal chieftain who said this when the whites came to conquer his state his territory he said you can only take away this you cant take away my spirit and thats what we all are shared a little while ago our purpose is to foster peace contentment peace equality justice and so on that is what that is who we are nothing can dampen our purpose wvwn the loopholes in the system cannot take away our will to the greatness that we are ok so now let us start with a fun exercise i will play some fun music to wake you up so here it

is it is not to wake you up the music has a purpose so here it is i am going to be saying something ok and the music is going to be on i want you to tell me later the gist of what i said not everything that i say but the gist of what i said is that alright is it agreeable to everybody is there any one in the room who doesnt want to participate in this sorry we are ready wonderful this is the signal for me so are we ready i am going to play the music i actually intended to play this throughout i wanted to play it a little longer but i saw faces that what is happening yes that is the purpose not to use the mike so what did you understand from what i said what did you understand from what i said no one knows but why not what did you hear of what i said and what did you understand therefore of what i said anyone anyone ...you didnt hear me why not i was talking loudly i was keeping the ... minus the microphone everybody is so engrossed in the ... i wouldnt say that because you care you are here i wouldnt say that yes ... the music drowned my voice ok but i was still communicating i was still saying something .. it is not a disability now you hear me you hear me now how did you feel when it played on and on and on yes music had a it did how did you feel when the music was going on and on and on and you had a task to repeat what i said and what repeat that or give a gist of what i said how did you feel about this when this was going on you must have been amused how else did you feel besides amusement helplessness handicapped helplessness why ...we are hampered by external circumstances beyond our control so you felt helpless frustrated because of the... that is right ... we were disabled by one reason or the other yes sir you had something to say sir the gentleman next to you you had something to say sir no how else did you feel how many of us felt frustrated irritated what is this nonsense she is doing and that too soon after lunch that too cutting short our lunch break everything put together just makes it worse you must have gotten irritated right how many of you felt upset its ok to be upset... it is an exercise .. frustration irritation helplessness perhaps you didnt feel it but others did one did it is important .. irritated and even if one person ..that is valuable information to me why because in this information ... we are sensitive to ourselves and to the needs of others who need that help so let us look at what is disability ok disability ok the united nations convention on rights of persons with disability says people who have long term now what is an impairment impairment is a disruption of disturbance of a structure for example if i lose this arm this is an impairment alright in the previous exercise you could not hear what i said properly and that is an impairment because that is not because of loss of body organ or structure it is because the music playing right and i was soft i deliberately did not use the mike so it would have the desired effect so it is an impairment an impairment by itself is no problem but an impairment or interruption with various barriers causes the problem ok because it hinders full and effective participation in society on an equal basis you can hear me now a little while ago you couldnt hear me is this equal or is that equal because there is communication happening even in the communication is on an unequal basis it is on an equal platform in the earlier instance when the music was playing and i was talking softly there was communication how was it on an unequal basis because it frustrated it didnt give us an opportunity to listen and to understand each other so that is what disability is so when we feel the way we felt when the music was playing how do you think we are justified in saying a person of hearing impairment cannot hear and therefore i need to do anything i just have to kind of continue doing my job

because it is his or her problem not mine we will not lift a finger to help often at times this is what we do we blame the .. impairment and not the society because this aspect of interaction with barriers is key in defining disability we don't blame the society this barriers in communication where the difficulty in understanding disability lies as in every discipline.. initially disability was understood as a core medical problem that is i can't hear because my .. membrane is affected my cochlea is affected and therefore the problem because i can't hear the problem is entirely mine it has nothing to do with others so i have to fix the tympanium i have to fix the cochlea so that he begins to hear the moment i do that i will not do anything to enable him to adjust in society simply because i live in a hearing world and those who can hear do not understand me as a person who cannot hear so therefore these complications arise and we are unable to actually pay attention to how we can treat people with disability as equal members of society ok this is the model of disability that came up in early 2000 it is derived from the social model of disability i just told you what the medical model of disability is the social model of disability says yes i have a problem i can't hear then ... role to play in enabling me to hear so how do i do that same language you hear with your ears i hear with my eyes because i see make meaning out of the word communication ok i will give you .. crimes against disabled ok and .. she was raped and the lady was raped and the police the father went to file an FIR and the father was told i can't understand what your daughter is saying because the daughter can't speak and he says now you go back i will not file the FIR that's how we operate we don't make an effort to bring someone who will communicate with her what do we do we don't for them to understand to be to be listened the problem is there is an impairment of there is a disorder which causes disturbances in body function or structure ok which means that this part is the impairment part this part this body function or structure is the impairment part which means i cannot participate in some activities because i lost this arm i cannot use this arm i cannot use both hands i need to use only 1 hand so therefore my ability to push doors is very difficult as my ability to put a hand as if i had both hands so if i push i would not have to push with one arm one hand i push with this hand then i end up hurting myself because i want to open this door and not this door however if i use both my hands what could i do i would be able to operate it ok so that is an activity limitation and because of my activity limitation to what extent do i participate in regular every day activities ok so activity limitation is often determined by personal factors that is how do i feel about the loss of my arm what are my family support systems what are other support systems that are there like for example i lost this arm who ... so i have to .. and you have other environmental factors such as barriers you know if there is a sliding door i have to just push a button i could move easily i didn't have to ask anybody let's say i am on a wheel chair user imagine i have to maneuver the wheel chair and the door how difficult it would be on the other hand if i had a button on the sliding door i push the button and the wheel chair went the door opened for me i could maneuver myself beautifully navigate on this campus ok let's say the .. from the dining hall to here the incline is pretty steep what if i could if i had a wheel chair so that i can deal manage and come here without anybody's help it is the system just the sight makes me dependant on others not my .. because the society does not cater to my needs the environment does not cater to my needs so i will just explain this and we

can read this .. ok i will just explain what these are like i said the environmental factors are .. factors ok what am i doing ok let me look at the different types of disability what are the different types of disability that you know just name them just name them and we will come back to this no types of disability hearing disability sight ok cant see ... yeah broadly it is called sensory yes yes limbs disability that affects the limbs problems of the limbs what else sorry yes intellectual impairment earlier it was called mental retardation now intellectual impairment sorry ... visual impairment yes and we also have... that is right so the persons with disability act of 1995 also includes mental illness as a kind of disability so there are 7 kinds of disability under the mental health act sorry the persons with disability act and in the new rights of persons with disability bill we have 19 types of disability and i think that is a very progressive act in our country so we have locomotive disability which is what we will focus on primarily here sensory disability which includes speech and hearing and visual intellectual disability which is earlier called mental retardation then you have learning disability you also have developmental disability which include autism spectrum disorder so on and so forth psychosocial disability which is of course mental illness and multiple disability which includes let say cerebral palsy and autism spectrum disorder or mental intellectual impairment and visual impairment and these are a combination of 1 or more disabilities multiple disability so broadly these are the types of disability each each disability manifests itself differently like any other disease disability also has a gradign of severity typically you have mild disability moderate disability sever or profound disability ok in our country anything which is 40% and above any disability which is 40% and above gives the person with disability the option to access entitlements the welfare benefits so on and so forth so the disability certificate is that document which ascertains what the severity of the disability is ok so let us look broadly at the broad causes of what how disability occurs so it can be divided into 3 broad causes the first is prenatal causes that is when the child is conceived from the time the child is conceived till the time the child is born so you have genetic disorders chromosome disorders so that is how you have the triple x that trisome 21 which is the which causes downs syndrome a type of intellectual impairment infection from mother when the mother in the first trimester in the first 3 months of pregnancy the mother has infections particularly infections like very serious infections which include german measles so on so forth or any kind of infection exposure to toxic substances particularly alcohol radiation and so on that is why in some parts of the country they say a pregnant mother should not be seen outside should not be exposed to direct light during eclipse because the possibility of uv radiation is much higher and excessive intake of medication congenital defects in the brain which occurs because of some mutation ok so all these are prenatal causes of disability then you have the perinatal causes that is during child birth typically what happens during child birth is when the baby passes through the birth canal the baby slides out very easily if the labour is not very difficult if the mother has prolonged labour and the child doesnot pass through the birth canal very easily doctors use the gynecologist obstetricians use what is called forceps so when they use forceps and there is a likelihood that the forceps can affect that part of the brain which governs certain activities so it could be due to fetal position difficulty abnormal fetal position it could be due to the umbilical cord being wound round the neck and the

baby being born in a very difficult manner injury to the brain and the bleeding in the brain low birth weight ok because maternal malnutrition when the mother is not eating well that affects the baby's growth particularly in the first trimester also in the first trimester some people do not recognise broad pigment that is why severe infection particularly jaundice soon after birth and then you have lack of oxygen supply during birth what happens is typically when babies cry what happens is the umbilical cord is cut the umbilical cord is that which supplies everything to the child so the child does nothing the child is a comfortable cushioned child in the mother's womb but once the child comes out into the world the child has to learn to breathe on its own so the first sound that the baby makes is crying and when the baby cries the baby is learning how to breathe activates the lungs and the muscles around the lungs and when there is a delayed birth cry when the baby cries 5 minutes after birth and typically what the doctors do they kind of pat the baby right and when there is no oxygen supply to the brain that is when there is an oxygen deprivation and this is also known as hypoxia often times this causes cerebral palsy and perhaps intellectual impairment or mental retardation largely where there is infection in the first few months or days of birth nutritional deficiency diseases particularly polio virus accidents and head injury that is where we need to pay attention to and what happens as a result of accidents and head injuries is the person the child loses consciousness and is bleeding in the brain and therefore hypoxia that is decreased oxygen supply so all these are causes of disability broadly speaking in this presentation I would look specifically at locomotor disability because that I am presuming much of the cases are related to locomotor disability ok so typically locomotor disability is defined as disability of the bone joints muscle leading to restriction in movement of limbs ok and it is an absence of inactivity it can be both inactivity of the whole part of the hand or leg or I mean that is how amputation occurs or it could be only in some in some part which we use the person is not able to move I'm not able to take this bottle of water as easily as I would if I didn't have this disability ok while there are others like have deformed spine etc which are also seen as disability which are not in the purview of this discussion here so typically what are types of locomotor disability that you see particularly related to accidents so you have common ones like lower limbs upper limb and spine these are the common ones ok which is because of accidents the uncommon ones are unorganic those which lead to head injury where the person there is a ... or a concussion after the accident and sometimes associated with the contusion or concussion are visual impairments and speech impairments ok there could also be memory loss associated memory loss especially when there is a head injury this is known as traumatic brain injury ok so these are broadly the types of disability now when we did this exercise a little while ago how did you feel what was your reaction to what was happening besides feeling helpless in your mind what next how long is this going to go on ... you felt pity for me ok yes I'm not able to communicate you were enjoying the music you forgot me in the process ... what else ... I will listen and enjoy the music anyway I don't understand what she is saying ok ... what else why is she doing this ... ok so all this must have gone on in your mind so and therefore some of us must have reacted to it yes or no and let us be honest about it ... is a reaction and why I'm being treated like children isn't it and what is this funny thing happening here these are reactions that we all have which is normal you know why because this is not a part of our

regular function you know it is a simulation exercise still you felt uncomfortable about it some of us not all and if you felt uncomfortable it is normal it is discomfort and i would like to acknowledge that discomfort so when a person goes a loss of a limb or a function of the limb what do you think the person will go through there is lovely model given by elizabeth kubler ross ok she is a lady who has spoken about how do we cope with situations be it death or be it illness she said we all go through what is known as a grief cycle ok so when we are confronted as in this case we are confronted with disability first thing we go through is denial so lets say i meet with an accident and both my feet have to be amputated both my legs have to be amputated ok and then i discover that i really cant walk i deny the fact that i cant walk i deny the fact that my legs are not there anymore so that is how i deal with it i avoid there is confusion there is emotion because atleast im saved i am not dead there is fear all of these we will be going through this is the time when people experience phantom limbs they say that my legs are amputated i say no i can feel my legs there are there i can get up and walk and lack of acceptance and denial what happens is people who are in hospital after amputation typically try to get up and start doing their work as they would before amputation and that leads to further .. and these are very tricky situation for typically youngsters i am saying more for youngsters because acceptance is far more difficult ok then comes the stage when i am angry and frustrated why me what did i do it wasnt my fault i was following roads safety i was following traffic rules and the road rules and still i have to go through the amputation for no fault of mine then comes depression where i go through anger i blame everybody else then i go through depression i feel very helpless like some of you felt a little while ago there is hostility ok and then comes the next phase where i bargain say i tell them why did you have to amputate my leg what if you know my would would have healed what if you had somebody else to put my bones together and ensure that my legs were saved or you say if i go to united states probably the treatment there would be much i will bargain with god also 100 coconuts you better get me my legs so we do all this bargaining then where we are struggling to find meaning we turn to others so that you know we are helped and at the end of this stage is where acceptance arrives where we explore options to deal with our lives in a manner that is currently presented to us ok so we move on both the individual and the family go through this it is not just the individual the family also goes through this so typically these are some of the difficulties that the individual faces lack of acceptance of loss of limb difficulty in adjusting to ... he or she is to forgo difficulty in adjusting to new ways of transporting that is the example earlier i could drive a car now i cant drive a car because i dont have my limb i may have to revert my license too ok i used to be an athlete you have seen shahrukh khans movie chak de india he was a famous football player but because of his disability he couldnt be play football for the national team so it is the same thing i have to alter my expectations and alter my life goals so all these and imagine if it is a poor family where the dependant on the child to take care of them and now the child the father has to continue to work and take care of the child and the child has disability and requires intensive care so it is .. that the family goes through and that is what care giving and care receiving is all about i heard a youngster say what i have to do for my parents my parents are doing for me now at this age a young man of 25 who had .. paraplegia paraplegia is loss of both limbs

so he has lost both limbs this is my duty i have to take care of my elderly parents now parents have to take care of me now it has become.. i feel ashamed and guilty i wish i had died rather than survived this are the things he says so even receiving care is as traumatic as giving care and we all know that care giving is not an easy task whether it is a little child or whether it is an old person or whether it is a person with disability care giving has its own set of demands and own sets of challenges that one needs to find ways to cope with so that's what it is caregiving and care receiving become a huge issue and particularly for in families where resources are far too scarce ok physical psychosocial reactions to disability we kind of just looked at kubler ross' table we also have others like for example because i cannot because i have lost my limb i faced discrimination and exclusion my friends don't come and talk to me anymore i can't do some things that my friends used to do earlier whether it is hanging out in the street corner or whether it is going for movie or whether it is going on bike rides i can't do the things that i used to do with my friends ok also because not because my friends don't take care of me it is also because i slow them down i remember a young boy who met with an accident who is an adventure sports player now this young boy met with an accident and he had to and he couldn't participate in the adventure sports for a long time he found that his friends were delayed because of him they couldn't do things faster because they had to keep pace with this young boy and that frustrated him and his friends it led to misunderstandings and difficulties which they actually talk about and resolve it so what happens therefore because of a disability not only are my activities of daily living affected i am not able to be a contributory member to society so remember yesterday dr arun mohan was talking about how there is a drag because of accidents there is a drag of 1.5 or 2% ON THE GDP ok and about 20 lakh people a year are re-injured because of motor vehicle accidents so if 20 lakh people a year are affected due to motor vehicle are we saying that these 20 lakhs are not important to our gdp to our growth to the economy of our homes and our country and are they so easy to dispense with because you know accidents happen every where and as a nation we can afford to be callous and irresponsible are we going to say that or are we going to pull up our socks and say we are not going to contribute to the disability in life years.. what is a life years lost due to disability or impairment and therefore what is the loss to the country.. i will just let it be what role do we have as judicial officers in being able to avert this that is something for us to think alongside this look at the extent of let's look at family income and loss of family income on one side let us look at the state expenditure on them as much as the family loses income the state has to incur expenditure in providing for their treatment never mind that the treatment is sub standard but nevertheless treatment which includes both psychological as well as rehabilitation needs so imagine to what extent we are because of our carelessness we are wasting money ok so this is what are the consequences of locomotor disability what are the aids often times aids and appliances don't figure in while considering cases for compensation i lose my limbs you only give me a compensation for loss of limb what about covering my aids and covering the processes of artificial limbs that i have to use they don't often cover the cost of prosthesis and medication after the surgery the person is to be on medication for 2 to 3 months post surgery in order to recover and broadly adjust with each other ok so typically aids and appliances are classified in this manner we have walking aids which

are walkers stick impairment crutches and so on they are not very expensive that is the diagram that you see there the various types of canes and walkers mobility aids like wheel chair and motorised wheel chairs you have seen that many have prosthesis and arthosis there is a .. i am coming to that sir i am coming to that so applicances that are fixed to a body aids are those which are outside the body you can use it as an aid whereas an appliance is it becomes a part of your both so i fix and artificial limb that becomes a prosthesis prosthesis is that which i need for a long time perhaps till i die so that i can carry out my regular functions i ahve lost my limb i need an artifical limb that is a prosthesis ok i have polio ok and in order for me to walk properly i need callipers have you all sen callipers the thing that they all wear with the boot they attach it to the leg the calliper is an orthosis meaning i will need iot only for sometime ok so i may not need it for a long time and its not that my mobility depends only on the orthosis so when i am at home i dont use when i have to go out lets say in a crowded place at home i am able to hold the walls and walk at home i am able to i feel disturbed by thiscan we orthosis is that where i need the limb i need the appliance till such time i am going out or i am doing other things at home i can walk with a crutch or i can walk with holding 2 sides of the wall or i can walk holding railings on both sides ok prosthesis becomes a part of me and orthosis is nto so much i mean i can keep it aside... orthofix th at is a prosthesis an orthofix i am not very sure of it but to my mind it is an orthosis which is fixed to your bodybecomes a prosthesis anything later post surgery post operative prosthesis which after a couples of months i dont need itfor example i have metal rods that were fixed when my bones were broken right after all they remove those metal rods ok so that is ... there are 2 kinds of 2 issues that we need to one is the lower limb prostheis and upper limb prosthesis ok so we have below knee and above knee prosthesis below knee prosthesis is prosthetic appliance is only used when my knee is amputated and theree is a little stump and you fix the appliance on that stump that is below knee it has its own functions which means here my knee cap is proper and my knee cap is alright and you fix the appliance where the stump is ok so in that sense it is usually used in order for me to gain preaccident level of functioning as much as possible so without.. function but i can go back to my pre accident level of fuctioning that is what the below knee and above knee prosthesis do the above the knee is when t is right at the femur bone alright you have the upper limb prosthesis is mechanically like a ... so this is what it is so what happens is there are wires that go right to my hand and chest and they are fixed so much of my movements are governed by how much signals a re given to the wires that help me in my hand movement why am i tellign you this becausethis is why it is important for us to understand typically every move if i want to get back to pre accident level of functioningi have to use a very good quality aid ok and the very good ones are often expensive like it in every case all cases so a below knee prosthesis costs anywhere from 8 thousand rupees to 8 to 10 lakh so lets take the jaipur set we are all familiar with the jaipur foot right the jaipur a simple jaipur foot manufacturing corporation... and other organisation .. no it is not ... i dont belong to any of these companies i only work in tiss ok so simple jaipur foot will cost somewhere 8000 or so ok but what it does is its functions are limitedthe wear and tear of the japiur foot is much faster than a other expensive ones so what does it mean to me also because the whole process of fitting of the limb is time

consuming i as an individual who has got an amputation needs to adjust with the limb it is not the limb adjusting with me i have to adjust with the limb and in the process what happens is it can lead to secondary complications such as you know because it is the jaipur foot is not tailor made to suit my need it is not it is a one size fits all it is a cookie cutter mechanism what happens is i need to find ways of adjusting the jaipur foot to my body ok so it is not designed to meet my need ok that is the problem it is not designed to meet my need and an above knee prosthesis costs somewhere between 20 thousand to 20 to 30 lakhs .. 8 lakhs or so but it will not last you for so long it can last you for about 20 25 years ok it depends on the functions of the components that is being used now am i losing the limb for flexion for extension ok and am i using it for is it time 10 minutes ok ... how am i holding my knee so i dont buckle there is initially while walking that is what happens after long time we start walking we kind of buckle our knees buckle so depending on the function the cost varies a hand prosthesis costs somewhere between 25 thousand to 25 to 30 lakhs mechanised version of the hand prosthesis why are we showing this because when claims come to you it is useful to know what is it what are the range of appliances that we get ok so what is another issue often times we are asked that this is another experience shared by one of my colleagues he was a specialist in orthotics and one of his clients his patients had a limb accident and at the time of claiming for insurance he was told that and this is soon after the accident was over this was just post surgery ok and the family applied for claims and he has told that disability certificate you will not get compensation till you have produced it you will not get it .. atleast at the start you can use for relief so these are the sort of practical issues that people face in the process of claiming for .. cumbersome paper work which is very complicated if you can find a way of making things simpler .. that would be so good like i mentioned earlier insurance does not cover cost of medicines.. and the cost of the orthosis then it becomes very difficult for people to actually address these issues i will just put down the legislations just as a way of sharing these are the legislations that pertain to the field of disability one is the persons with disability act of 1995 the national trust act of 1999 mental health act of 1987 and the 2 bills that are pending post united nations convention for persons with disability that is the rights of persons with disability and mental health care 2013 bill we have a session on that sir i will quickly close with this i just wanted to share a few things about compensation follows conventional technology ok and because it follows conventional technology it does not have it does not use it does not tap into technological advancements ok and the pricelist given by the government is far less than that of a private company even if appliances have to be imported what happens is given the conversion of rupee rates that alter pretty frequently process are not appropriately fixed and therefore it becomes an issue while claiming for compensation and there is no regulatory body for managing pricing of prosthetics and orthosis within the country even if they have a pmo association they dont have a regulatory body that regulates these issues as well i will just end with this quote it is by george bernard shaw I am of the opinion that my life belongs to the whole community and as long as I live it is my privilege to do for it whatever I can. it is no "brief candle" for me. It is a sort of splendid torch which I have got hold of for the moment and I want to make it burn as brightly as possible before handing it on to future generations. and here is this torch of disability

with you all so that you make it burn and hand it over to future young lawyers so that they can carry forward in the same spirit as you would do thank you

good afternoon to one and all present here so i think maam has elaborately discussed about disability and the types of disability and all that thing so now our topic coming to understanding disability so we i am going to discuss the legal aspects of it so i think all of you are well aware of these things so i am just going to give an idea of what i mean certain ideas and principles evolved in few cases and how we can understand disability better so the meaning maam has already explained i will just read it once the meaning of disability it is the state or condition of being disabled so there is a permanent physical flaw weakness or handicap which prevents one from living a full normal life or from performing any specific job so there is lack of competence power strength or physical or mental ability and in coming to compensation tries to put the person back again to the position is the method through which we help them so compensation meaning it means anything given to make things equivalent or to make amend for loss recompense remunerate or pay so this is a case state of gujarat versus shantilal where the word compensation was given a wider interpretation than the word damages so now coming to another case law what is the main object of awarding damages in this case law they have very clearly given the object of awarding damages so the provision of the motor vehicles act makes it clear that the award must be just so just means that the compensation should to the extent possible fully and adequately restore the claimant to the position prior to the accident so the object of making or awarding damages is to make good the loss suffered as a result of the wrong done as far as money can do so in a fair and reasonable and equitable manner so we all know that we cant give back exactly the position or the life which the victim already had but to whatever extent till which we can compensate that should be done in term in monetary terms in pecuniary loss as well as the non pecuniary loss so coming to the heads of damages so mainly here we will discuss about the personal injury accidents so coming to the heads of damages we have both pecuniary and non pecuniary so pecuniary loss is nothing but the loss of earnings and other gains so maybe in the future when had he not faced any injury he would have made few other gains so that would also be included under pecuniary losses so other is non pecuniary loss is the pain suffering loss of amenities yes so coming to non pecuniary is includes the loss of pain and suffering the loss of amenities of life and the loss of expectation of life so this is a case where the same has been reiterated jagannath rai versus ganga ratna sibal so in this case the court held that the general principle which will govern the assessment of damages in personal injury cases is that the court should award the person a sum of money which will put him in the same position as he would have been if he had not sustained the injuries and in narsimha murthy versus oriental insurance company limited in this case the court has given the principles for awarding compensation under what head the compensation can be awarded so in what way segregating or putting it under different heads becomes helpful to make compensation awarding compensation easier so in cases of personal injury the different heads which have been stated are for pain and suffering for loss of amenities the shortened expectation of life loss of earnings or earning capacity or both and the medical treatment and other special damages so these are the heads under which the compensation can be categorised so that it would be easier to compute so

this is a very elaborate judgment on how disability is understood and how compensation is being awarded. Ratan Lal Mehta versus Rajender Kapoor and others. So in this judgment the court has given it has taken different views on how disability can be understood and how compensation is being awarded. So first assessment in injury cases so I have just listed which have been stated by the court. So the first one is coming to non-pecuniary damages so pecuniary damages we assess and give fair and reasonable compensation but coming to non-pecuniary damages which includes pain suffering and all that even for non-pecuniary damages the full and fair compensation has to be given and then treatment of victims who are coming to victims who are unconscious or who become unconscious for over a period of time so coming to them while compensating the non-pecuniary damages happening to them the loss of amenities and loss of expectation of life has to be considered and also the loss of pain and suffering so all these have to be considered for victims who are unconscious and the next point similar type of injuries in other cases they generally follow the earlier awards passed in similar cases where similar injuries have happened when such type of cases come it should there should be an increase in the figure keeping in mind the inflation point so over a period of time there would be an effect of inflation which would also have an impact over the calculation of damages and that should also be added while awarding compensation the next one while giving while assessing loss while assessing the damages the positive factors and the negative factors have to be taken into account so coming to the so when any injured or a victim he faces certain when he faces an accident 2 things would have happened to him so one thing is he would have been deprived of many good things in life which he was in possession or which he enjoyed all this while and the other thing he would have a positive infliction of certain unpleasant things so pain and suffering would be imposed on him so he would have lost certain amenities and he would have there would have been a positive infliction of certain unpleasant things in his life so compensation should be made for both the loss which has occurred and the next point here is so as I stated already we should keep in mind the inflation so there might be certain advancements in science in medicine and in rehabilitation so the victim should be compensated in such a way that he is able to manage the future so keeping in mind the inflation the advances in science and rehabilitation the award amount should be given and then the compensation can be either high or low under different heads so there are different sub-heads under which compensation is being awarded so 1 sub-head might be compensation is higher under 1 sub-head and lower under another so in this particular Ratan Lal Mehta they have stated that the award amount and it can vary between the different heads as long as the award amount does not exceed the total amount given but under certain exceptional circumstances if the facts justify the claimant might have asked for a very low compensation so he might not be aware of what the just compensation so it is not that when the claimant is unaware of the amount and when it is a low claim it in exceptional circumstances if the facts of the case justifiable then the award can be given more than what is claimed this was given under Nagappa case Nagappa versus Guru Dayal Singh and others so here when the case is appropriate the compensation amount awarded can be more than what is claimed and then coming back to this case law so as we saw earlier the categorization separate itemization so this is a safer method so that not even one head where loss

can be which should be compensated is left out so even if one component is missed it will result in injustice to the person to the victim who has suffered so separate itemisation under different heads would ensure that the victim is given proper and fair compensation and then coming to pecuniary and non pecuniary damages the pecuniary damages if they are high it is not necessary that the non pecuniary damages should be low so non pecuniary damages should also be equally and adequately compensated and while evaluating non pecuniary damages there cannot be any discrimination between the poor and the rich victims so the nagappa case I have already stated and then coming to this case law laxman vs divisional manager oriental insurance company here in this case law the main point put forth is generally we award compensation for the immediate treatment for the victims so what about the future so how far while calculating while assessing we should also take into account the future medical treatment or care that is necessary for one particular injury here the personal suffering of the survivors of the road accident and those who are disabled in the accidents are manifold sometimes they can be measured in terms of money but most of the times it is not possible to do so if an individual is permanently disabled in an accident the cost of his medical treatment and care is likely to be very high so in cases involving total or partial disablement the term compensation so this is used in section 166 of the motor vehicles act would not include would include not only the expenses incurred for immediate treatment but also the amount likely to be incurred for future medical treatment or cure necessary for a particular injury caused by an accident so this would also include the which we saw the rise in inflation cost of living has also to be taken into consideration and this is a case law sahaya jaqueline kiruba vs veeraswamy in this case law the claimant has made right leg below the knee has been amputated and the doctor has examined and given a disability of 70% so here the appellant claimant is making a claim stating these so she has because the accident she has had to discontinue her studies and even to attend nature's call she had to depend on others and she needs future medical expenses for purpose of getting another artificial leg to be fixed she lost her marital prospects she lost her mental peace and her vacant space after removal of the leg is a perennial reminder to her that she lost her leg so her dream is to earn at least 50 thousand to 70 thousand per month so that has become impossible so these are the contentions raised by the claimant so the tribunal has awarded an amount of 3 lakhs 17 thousand so is that a justifiable amount because thesatyawati vs raju 2004 1 tac 418 delhi ... so the tribunal has given a compensation of 3 lakhs 17 thousand which is totally insufficient the girl has to fix she has to get her artificial leg fixed and her age is around 17 or 18 so she if she grows over a period of 2 3 years she has to get another artificial leg changed so all those has to be taken into consideration so the tribunal without taking into consideration any of those has just fixed the amount of rs 3 lakh 17 thousand so this amount has been enhanced by the high court to rs `10 lakh so considering all her future expenses everything the amount has been fixed this is the way disability has to be understood and it should be adequately compensated so this is another case law pratap narain singh deo vs srinvas sabata so in this case the carpenter he suffered amputation of his left arm from the elbow so here the supreme court held that there is total disability as the injury was of such a nature that the claimant had been disabled from all the work which he was capable of performing at the time of accident so it is total disability it is

amputation of left arm from the elbow but he is disabled from doing all the work which he was capable of performing at the time this amounts to total disability so this case this ratio has been followed in another case law Suresh vs Oriental Insurance Company Ltd and another where they have held in this case law there is an amputation of right leg below the knee so here the claimant was rendered injured and unfit for the work of the driver so right leg below the knee he is rendered unfit for the work of driver this amounts to total disablement and the loss of earning capacity comes to 100% so the following the ratio in Pratap Narain Singh Deo this was the same thing was followed here in the the loss of earning capacity was estimated as 100% and then coming to functional disability this is a case R Venkatesh vs P Sarvanan so in this case the main thing which the courts had focused on is so in terms of functional disability if the disability sustained by the claimant is total and 100% though only the claimant's left lower limb was amputated so this has been quoted in another case Narsimha Murthy vs Manager Oriental Insurance Company so it is well settled that the economic and functional disability will have to be treated as total even though the physical disability is not 100% so this is main observation in this case law so the physical disability may not be 100% but the functional and economic disability has to be treated as total disability even though the physical disability is not 100% this is another case Govind Yadav vs New India Insurance Company Ltd so in this case this was the case for non pecuniary damages like higher sum was awarded so in this case the helper or a cleaner in a mini bus he was earning 4000 per month so he suffered amputation of his left leg in the accident so the compensation towards the pain and suffering was awarded as Rs 11 lakh 50 thousand and towards loss of marital prospects a sum of Rs 1 lakh 50 thousand was awarded so the total sum tribunal has awarded a sum of 3 lakhs as compensation which was enhanced by the high court to Rs 9 lakh 53 thousand and 600 so this is another case which tells how the courts and the tribunals should help out the victims so Ibrahim vs Raju and another so in this case they have quoted they have listed out few points where the courts and the tribunals can lend a helping hand to the victims so the first thing generally the insurance companies will be in a better position to get legal assistance than the victims so victims of road accidents are disadvantaged in engaging competent legal assistance vis a vis insurance companies so in that case the court or the tribunals can lend a helping hand to the victims and then result in delay in adjudication of claims and inability to claim adequate compensation in this in such situations certain initiatives can be made by the tribunals so there is a need to adopt a proactive approach need to award just compensation and adopt proactive approach by tribunals in such cases is being emphasised in this case the tribunals must ensure that the compensation claims are disposed off with required urgency and compensation is awarded in adequate measure keeping in view the relevant factors so Sarla Verma case the multiplier table and then this is another case law there is a great implication on the quantum can anyone tell if the sum awarded is right or if there is any mistake no ...can you....the table is alright this is a case of permanent disablement so here they have stated there is no difference in principle of assessment of compensation in case of death and permanent disablement and the court can come out with the amount so can any one say if it is right can you find out anything from this judgment ...yes so one third deduction should not be done this is because this is a case of permanent disablement where

one third deduction should not be done but here they have deducted one third deduction is done so this is one of the high court judgments .. supreme court judgment should no have been deducted the factors which we have to look so with this case law we are going to discuss first thing is the loss that is to be compensated and then the second one to whom are we compensating the loss so inc ase of death the loss is being compensated to the survivors of the persons family but in case of permanently disablement the loss is being is has to be to the permanently disabled as well as to the members of the family in that case how do we compensate in that case so ehre the deduction the one third deduction should not be done because the disabled is a living eprson so there is n o need to deduct the one third expense in this case so the amount would be actually more but they have given after deducting one third expense it has gone down and then i think maam has discussed all the all the types of disabilities so i would like to jsut tell a small incident so this is so we all know dr abdul kalam so he has worked in lot of he has achieved many things in his scientific life so one question which was put before him he was asked by a person the best thing which he would feel that he has achieved in his scientific life so the answer which he gave was the greatest achievement in his career was designing a low weight auto calliper for the kids who were affected by polio so this calliper was before he could design it it weighed 4 kgs so after designing it the metal used for the agni missile the low weight was reduced to 400 gms so he said that was the greatest achievement when i saw the smile in the faces of the parents of those kids and kids were able to walk freely and they were able to move comfortably with the light weighted callpiers so that was the achevement which he felt was for his lifetime so i feel you are the people who can help out the victims to feel you can make them feel more comfortable you are the people who can award them more compensation fair comepnasation in order to help them live their lives better and so they can have a pain free life thjough it cant be done physically atleast to teh extent we can help them we should and i would like to conclude with these 2 quotes this i mean the first quote is you are not disabled by the disabilities you have you are abled by the abilities you ahve but the worst thing about disability is that the people see it before they see you so the disabled does not mean that the disabled are not abled people they are able to many things but the world sees their disability before the before looking into the person or the ability of that person so that is whny we have to compensate the disability more and help them thank you.....morning the whole afternoon and evening i guess so anything you would like to ask even dr srilatha this is the only ocassion you will have because she is leaving after this ... ok hopefully you have something to take back that is all we are trying to do you have something of use that you can apply to your work so i think we will conclude then just one announcement 7 30 there is a musical that is being organised by nja i would urge you to just attend that there are muscians coming from outside means from bhopal only but good muscians who will be coming to perform for you so please do attend and we will see you there ok ... it wont be filmy i will tell you it wont be filmy ... 7 30 after that dinner starts eightish we will have dinner so i will see you there before we part thank you dr srilatha for being here and our other 2 speakers will be there with us tommorrow thank you maam.

SESSION 9 – LIABILITY OF INSURERS FOR COMPENSATION ON THE BASIS OF NO FAULT LIABILITY UNDER SECTION 163A

I think we'll start. They can come. Good morning to you all. I think we won't waste too much time and start immediately.

I like to just introduce our panellist. We have with us Honourable Justice Mridula Bhatkar ma'am judge from Bombay High Court. We welcome you ma'am to National Judicial Academy and thank you for taking time out to be with us. We also have for the next session Dr. Harish Shetty also a doctor from Bombay. Welcome sir. And without wasting too much time I'll give the session to ma'am. Please

Good morning my brothers and sisters. I'm a judge like you who worked as a trial court judge for 16 years in Bombay City Civil and Sessions Court and then elevated to the bench in 2009 so I understand the problems of all trial court judges and especially when there are many different contradictory or everyday judgements of the Supreme Court and High Court are bombarding and then ...and the legal position is something different then it becomes difficult for a trial court judge to arrive at a conclusion and find out what is the law exact law especially in the cases like motor accident claim accident MV Act.

Friends you know that this now because you have been working as a tribunal or dealing with the cases of under the MV Act and since the last two days you are having many sessions we all know that this law is an outcome basically outcome of law of torts that is from the common law.

In England there was a Fatal Accident Act in 1815 1839 earlier than 1855 we got an Indian Fatal Accident Act by Britishers and it was considered a need of a time as there was a development of the automobile industry. Imagine if at all there were only bullock carts or the horses running and we are travelling by such vehicles and there was no no automobile industry at all there was no question of introduction of any law under the -- or having any such kind of a legislation.

So if we see the history of our legislation or the enactments it is always we know when there is a need of the time which makes us to -- our legislators to frame that particular enactment of the law. And this law or this legislation and the development of law is because of there is an enormous I mean we couldn't even imagine unimaginable development in the automobile industry and so this law was in 1939 first we got this Motor Vehicle Accident Act.

When we see and when we talk about our tribunals and the compensation under the Motor Vehicle Act we have to consider that we are dealing with only chapter 10 11 and 12 of the MV Act because Motor Vehicle Act itself is a different act that is dealt by everyday by our magistrates or when we are working as magistrates we have worked. We have dealt with this act because there are offences under the motor accidents. So this is a law out of which only chapter 10 11 and 12 they are clogged out and they are the special special enactment to give the compensation and it cost

some liability on the insurance company because there is a specific section the act requires that all vehicles are to be insured.

So this is a different provision and now you have heard many lectures from the persons from the insurance company and you know it's a in fact it's a business. If you look at from the other angle it's a business. So as there is a vehicle every vehicle is to be insured and if every vehicle is to be insured then there is a business. When there is money comes so it's another industry that is a policy. So different insurance companies they were firm and those insurance companies now they are accepting liabilities to pay because they're collecting premium from the owners of the vehicles which are insured.

So this is all it's a different circle. If you see that that how the development it started then how the legislation came into existence then some industry then business policy liability and then also formation of tribunals because whenever there is a matter of compensation or a payment or money or accident then it is necessary that these all -- these matters are to be -- these problems are to be adjudicated. And these problems are to be adjudicated so we are there.

So now this is basically from the torts and the two important principles from the torts again I mean which they really govern this section 10 11 chapter 10 11 12 are two from the torts you have. Which are those One is and that is -- that is it was basically from *Donoghue v Stevenson*. That is a famous case from the torts British common law. That is *Donoghue v Stevenson* and second is a negligence all vicarious liability. So our entire law is based on a most I mean majority of it compensation cases on the vicarious liability principle are and that is another case of *Ryland v Fletcher*.

So these two principles are there. If at all you have not read those -- these cases I request you to please lay your hands on these cases and just have refurbished. We have learnt torts long back when we are in first year or second year of law but till now we hardly I mean we don't come across such cases.

Of course there are cases of the damages and when somebody is or in the consumer court when somebody is prosecuted then. So these two important principles are there. When we want to understand negligence then we again we look up torts and the jurisprudence in the *Simon's Jurisprudence* I request you to go through it again so it is helpful to understand. It gives us insight to understand this law.

Today I'm given a topic that is Section 163A of the Motor Vehicle act. Now 163A. Now let us see the scheme of this chapter. Anybody will tell explain what is the scheme of chapter 10 11 and 12 You have books. I request you to please open if you don't have a book because we have to be -- we will be dealing with the section so I want you to read section.

See I know you all are district judges and I know that when you are sitting heading that I mean sitting as a tribunal and dealing with this act all senior members of the judiciary or the higher

judiciary are appointed and the powers of this accident cases are given to only the senior members of the judiciary because the judges are required to be learned more learned and matured and sensitive too. So though you are aware of that but I just want some of you may explain the scheme of 10 11 and just see the chapters and you will come to know. Yes. First is that when we start from 140 then it is a No Fault Liability. Then the chapter comes another chapter number 11. It comes for – no third party. Third party. Third party liability and the last one is a tribunals. Tribunals. So this is the scheme. These 10 these 3 chapters they give us a particular scheme that is no fault liability third-party liability and the fourth one is a formation of the tribunals. So these -- this is how we work. Now our first question comes in for us that when there is a specific chapter if at all you have book please open chapter 10. Please. I am also opening along with you because it is always beneficial to read the chapter again and again. Everybody we all. So let's see. Chapter 10 liability without fault in certain cases. This is how we start and then 140 we call it in a that it is a no fault liability. Then if you see that chapter 11 right if you come across chapter 11 that is it starts from 145 Section it says insurance of motor vehicles against the third party risk. Now if at all there is a section 140 a specific section of no fault liability what was the necessity for the lawmakers to make a separate section under 163A of the Motor Vehicle Act That is a question in our mind. Anybody from you will tell the audience a very small group of specific to 140 tribunal. And 163 Other yes. So we all know you are absolutely right. Correct. Yes. But 140 that is a no fault liability. So no fault liability is it in fact it is a departure from a basic principle of torts. That is we say that a personal damages when we apply we say that you establish fault and as you have learned there are always there is a fault liability and no fault liability. So fault liability you have to when a complainant or the petitioner or the applicant he comes to the court he has to establish a fault is a fault. Fault of whose fault Other party. Fault of the owner driver or the ofnding vehicle. So that is a fault liability. But this fault liability has found that to prove fault it was such a cumbersome process and therefore it was suggested by the Supreme Court that yes you invent something that is no fault liability. This was introduced first and then on the basis of that then legislature came with this no fault liability principle. Now no fault liability was introduced when 140 1994. 19 '94. No not 1994. We are talking about the no fault liability 140. 140. 140 was introduced in the year 1980. Yes there that time 80 to 82 it was there 80 to 84 1988 it was there yes. So that was the first time 140 – not 140 it was 92A. It was 92A initially it was introduced. So initially the compensation was a 750 and 25 750 no 750 earlier earlier but then it was 25 and 12 92A. 25 and 12 for a permanent disability and for that it was 25 and thereafter that amount of the compensation as it is found to meet the time needs of the time it will enhanced in the year 1994 so it was made 25 and 50 and today the same thing is there. And in the year 1994 this 163A was introduced with efct from 14 November 1994 this scheme. Now what it says As my brother and sister they said that 140 is a no fault liability to meet the immediate – it should give the immediate relief to the family of the victim or the victim himself if at all he is injured and permanently disabled so that 140 is there. But 163 is a permanent I mean the final adjudication. So difrence between 140 and 163A is one is injury one is final. Final. And can we go for both I mean we will apply for 163A and somebody files one application as an interim relief because see in our all the

proceedings there is always a provision of interim relief. So one may el that yes why not 163A is there. It will take time so 140 is also there. I will place application but that is not permissible. That's not-- Section both cannot. Both cannot. Both cannot. Therefore so we have to see that section. It says either this or that. And this is interim so it necessarily comes under 166 application under 166 and not any other. Now 163 is a final adjudication and when final adjudication is there that application is filed but it is a very peculiar very difrent type of enactment. Will you please tell me what are its peculiarities Please anybody 163A How many of you have dealt with 163A matters Of course I can see that yes. It is less technical ma'am. One need not prove negligence wrong. Correct. Even family one person could be sufficient. Need not go strictly as per negligence rashness about driving. Right. YeahCorrect. It must be below 40000.40000. 40000 is theYes. That must be above 40000. 40000 per annum. That's a limit that is a given that it said that it should be a limit under schedule schedule of the two of the MV Act. So let's-- It should not exceed. It should not exceed. So this is what under 163A that we have to understand. Now let's see that you all have now you must have seen or gone through that book which is you were provided by Shruti madam that is a book which is given by... There are two cases under 163A. That is one is of Deepal Girishbhai Soni and--Rajni Devi. Rajni Devi is on the other. It is not much of relevance. That is when pillion rider and the driver they were going on a scooter and met with an accident but there was a confusion who was driving the vehicle actually. And then the Supreme Court has taken a view I think this is..... judgment has taken a view that now it is immaterial but now under this a person I mean that compensation is to be given. It is a liability that you but then this Rajni Devi judgment is important judgment is that Deepal Girishbhai Soni of 2004 because it is the three judges judgment. It's a full bench judgement and in that judgment what issue was there First and they have two issues were there in Girish – in Deepal Soni. So first was that whether it can be a triable both and whether I'll tell you you may read it afterwards if at all you have not read it. First is that whether it is an interim adjudication or whether it is a final adjudication or not because see in 1994 this was introduced late '94. So '95 '96 it took time for the people to know to file the applications to come to know lawyers also and then the judges start applying. So it was the first a good judgement Deepal Soni. In1994 we got the judgement three judges. And they said no it is a final adjudication. You cannot – you have to file a separate too it's a final. And secondly it also laid some principle in respect of no fault liability that we will be dealing it later. So the another judgment like if at all we are taking up the same – no first we will see the scheme and then we'll go in the issue of for no fault and fault liability. Let's read the section because we are learning about the section I prer to or a schedule first.You have schedule schedule 2 here display schedule 2 or no no. See otherwise I will just show you. You have see here my friends we all are here to learn. I am also learning with you when I teach you or when I not I say teach teach is a bigger word. I am just having a dialog I say with you and expressing my some views with you. It's open dialog. So whatever you have or I have some difficulties we should exchange with each other. This is a place I el India is a place where we can be absolutely open and when we don't know anything about it we must discuss. We should not el shy and we must otherwise we will not learn. So el free. We may ask. We may exchange. And we may tell each

other about that. So this 163A I'm sure you all must have seen on the last that is page number 172 of MV Act. That's for myself I'm just I'm telling you. Then it is very necessary to read this schedule carefully. How it starts Because section you know now this is a structured formula and this is a 163 is a structured formula. This is introduced because two eminent people of a particular strata to get their compensation at immediately at the earliest or without going into the hassle of proving number of factors which when the application under section 166 is placed. So this is 163A to enable -- enable them to the class of a strata who are having income below -- that is what we have to take 40000 as it is mentioned in the schedule. Now the question is that if a person who has filed who is having income like 2 lakhs rupees per annum and he files an application under section 163A because it says -- what it says 163A You should not a person who files the application for compensation need not prove need not prove that wrongful act or a fault -- a fault of the driver or the owner or of the ofnding vehicle. So it is not his responsibility what we say in our usual evidence act burden. So there is no burden on him to prove this fact. So when there is no burden it is a no-fault liability. The other person whether he has fault or he doesn't have any he may be at fault or he may not be at -- may not be having any fault but still the liability costs on him. So this is the principle. Now if at all a person files and if at all you want to give this benefit the legislators they want to give this benefit to I mean I say to a particular strata of the class that is a class which are mainly poor people a lower class that if at all somebody like a ragpicker from the road if at all ragpicker she loses her husband who is say about 25 years old or 30 years old then ragpicker will have to if at all she wants to come to court and if at all she is asked to you prove how your husband died and then to prove that the other person that ofnding vehicle was rash and negligent how she will prove She has no means or very less means. She may go to legal aid. She may get that legal aid but then another there may be many problems. Already the application is filed. Then prove evidence. Legislature has this answer. I always el that our state is a welfare state and these some legislation or the enactments are made as a social legislation. So 163A is a scheme within the social legislation. It is a scheme of social legislation within the social beneficial legislation. Try to understand. So it is a one more special corner is given. So this is the position. Now 163A I told you that if application is filed a person who is having suppose 5 lakhs income per annum he comes he files. What will be the position PleaseOnly 40000. Correct. Only 40000. Correct. Whatever his income is. Absolutely right. My sister brother correct. See-- We don't have a freedom to go for this. Correct. We will not go because there is a structured formula. So what we will do We will ask that either you have to relinquish your claim above and stick to restrict yourself to 40000. And when that claim comes to 40000 we will deal with it whatever formula is there. This we have to just apply this structured formula because coming to that. I am coming. There are certain questions. I know that because 163A very confusing. We el it is very easy but it is a big question mark still. So what we do in 140 Nothing. Whether we discuss all right you are dead. How much I should give Straightway 50000 and state straightway 25000 the legislation had made this job very easy for us. Now when there is a structured formula we should not think of anything. We have to deal with the matter as per the structured formula. So if 5 lakhs rupees per annum make it 40000 and the 40000 is there all right give accordingly or or we have to tell them or the applicant please

Convert it. Correct. Correct. Please convert your claim in 166. And 166 if at all he doesn't have court fees to pay then all right we entertain it and at the time of final decree award we say that all right whatever the excess court fee is there I'm awarding you something more whatever you have asked for so you have to pay that court fee. Ma'am no court ... There is no court fees in Punjab Haryana.

In Punjab and Haryana no. Yes but in -- yes it's a very good I mean the rules under the state but in Maharashtra there is no such -- there is so such but there is some fees so whatever is there. It is only rupees 13 in Delhi. 13. 13 is for anybody. Any -- of course of course. Court fee has to be paid in West Bengal. Okay. See in India we have all different states different rules and some state legislation. Even under the Succession Act also we have -- deciding the share of a woman we have a different initially different state amendments. So even the criminal law also certain state amendments so as per the rules of your state you have to go through it. I am just telling you that if at all this is a situation what you have to do. If at all it is a fixed nothing. Then you have to just convert it and that's all. This is one aspect. Now before going to this schedule I must tell you that what is the confusion about this schedule When we actually start implement or operate as per the schedule for this is a scheme. Anybody has any question in respect of scheme I mean it's a bare act I'm telling you. Then we are going to the schedule. See in case of Trilok Chandra UPSRT and Trilok Chandra's case which was decided in the year 1996 see I am bad in remembering the page numbers. I just remember the names and the year so I give the year and the name of that. So in Trilok Chandra case Supreme Court has said expressed that whatever schedule is there that schedule is full of mistakes. We can't apply that schedule because there are mistakes in the calculations. Yes please brother My question was it was long back you know 1994. We are in 2016. Yes yes. I am coming to that. I am coming to that. I am coming to that. So Trilok Chandra in 1994 it was expressed. So then what happened then I mean it travelled ultimately. Then we come across -- it was specifically mentioned that legislation needs to amend the law that is what is expressed. I will read also if at all I get time those paragraphs in Trilok Chandra. But then what happened thereafter then there was a case of Reshma -- no Reshma Kumari but -- no no no. There are two Reshma Kumaris. Madan Mohan and Reshma Kumari 2009 also and 2013 also. We'll refer 2013 afterwards but 2009 Reshma Kumari Madan Mohan and Reshma Kumari that's a Division Bench S.B. Sinha Cyriac Joseph Justice judgement of two another Division Bench and there again this 163A was touched and in that case that time it was mentioned that yes there is a confusion as Trilok Chandra had said but there is also views are taken no that formula can be adopted. That is also mentioned in Reshma Kumari but it did not give finality in that 2009 Reshma Kumari judgment. Then what happened in 2009 itself in the Division Bench of Gurumallamma National Insurance Company and Gurumallamma in that case the Division Bench dealt with this issue directly and Division Bench referred judgement of Trilok Chandra. And they said there is no confusion. There is no confusion in the schedule that whatever schedule is given it's correct and why it is correct The difference is this. They said when there is permanent disability then multiplier is to be used. Whatever multiplier is given in the schedule that is only for the instance of permanent disability and when there is a death refer schedule as per the rupees in thousand.

I will explain this rupees in thousand. What happened Legislature if you see that if you see it properly you will understand legislature instead of giving two schedules it gave one composite common schedule and it created confusion. But in Gurumallamma that confusion is removed and it said for multiplier is to be rered or to be adopted when there is a only disability. Multiplier on the basis of multiplier calculate when disability. When there is a death rely on the schedule structured formula. that we will see that.

Then what happened Reshma Kumari Division three judges' judgement in 2013 Justice Lodha in 2013. What happened In that judgment that was again Reshma Kumari Madan Mohan and that is also 2013 and 9 SCC. Earlier Reshma Kumari 2009 13 SCC. That's a coincidence reporting.

But in that Reshma Kumari what happened Supreme Court has said whatever it maybe the multiplier which is given in Sarla Verma which is now we take it as our Bible Sarla Verma in column 4 adopt multiplier whether person and in the boys of 15 years or what adopt multiplier and it may be under 166 or 163A even in the death adopt and it is 163A is not a – it's just a guide not a ready reckoner or something is like that the words were used.

So we have to just take it as a guiding principle. It is not a – that view was taken in Reshma Kumari in 2013. But in Reshma Kumari if you see Gurumallamma is not rered. Gurumallamma is not rered and therefore where the confusion was removed by Gurumallamma again it remained like that. Still that confusion is there. This I have not after 2013 under 163A heavy ruling in respect of explaining structured formula but Gurumallamma is not rered in Reshma Kumari. That is what I – my impression is there. Yes sister you want to say something. You want to say anything Prathima

Now we will come to that structured schedule. You have that schedule. Therefore I want you to see the schedule. Do you have schedule here Schedule if you don't have just she will place it the schedule second schedule. Correct. See the complete schedule is not there because now she is – this is the complete schedule right

Now Schedule II you all can see that Or you may rer your books also. Schedule for compensation third party fatal accident injury cases claim okay and see Section 163A that is mentioned. Now fatal accidents that is mentioned. Now here what is they mentioned Annual income the first one annual income. See that is 3000 and that is all per annum correct 3000 per annum so what will be the income per month 60 rupees right Means legislature has considered person from such a low income group also. Now it is up to the judges to give efct to such kind of a beautiful legislation. It is up to us. They have done their job. Now it is up to us. Now 3000. Then 4200. This is it comes up to 40000 per annum. So 40000 per annum is per month how much it comes

3300 or so.

But it's already 800 800 rupees per month.

How much it comes 800 per month

800 per month.

No no.

3300.

I know. I am also very bad. We judges mostly we are bad in calculations.

3300 per month.

3300 around so it is per month.

Yeah.

So this is 40000 it comes maximum it is say. Now you see now just little bit it should be up. Make it little little higher. Enough. Enough. Enough. Enough. Enough. This has become now this has become the annual income. Now what it says the second age of victim upto 15 years correct Multiplier is 15. Sarla Verma now we all know that multiplier multiplicand everything we have covered. Now rupees 60 60 right 3000. No no no. I am telling you this is what 60 84 108 132 I am reading the first line. 180 204 rupees was written right. This is all rupees. Correct.

Per month ...

Yes yes.

Per month.

No. No no. Try to understand. One minute. This is written correct. What mistake we are committing is this. Just go above rupees in thousand. No no you mark that also rupees in thousand. Rupees in thousand. That is always missed. See rupees in thousand and the first line also you mark it now. No no no. No no no no. Shruti this one 60 84 60 84.

Okay.

60 84 and 108. That also you mark in colour. One only correct What we forget We don't read rupees in thousand so--

Rupees has to be written.

So correct so this is what multiplier multiplier is to be used only for disabilities. So if at all there is a disability a person has suffered from disability and suppose he is 15 years old what he will do Then how we have to calculate 15 years 3000 rupees do multiplier 3000 multiplied by 15.

45.

45. That is to be given to the permanent disability injured. There is a death. Death happened. So the multiplier was 15 correct 60 is to be read in rupees in thousand. Rupees in thousand and then another you know then after rupees in thousand compensation in case of death. Compensation in case of death 60000 84000 108 means 1 lakh 8000 1 lakh 32 1 lakh 56 1 lakh 80 2 lakhs 2 lakhs 28 2 lakhs 40 3 lakhs 60 4 lakhs 80 if income is 24000 per month and if at all income is 36000 per month or per year then 7 lakh 20 maximum 40000 per year then it is 8 lakhs. This is what we have to in the case of death. That becomes 8 lakhs still there is something below.

130.

Correct. is right. No no no. This is something. No you have not that – now now there is a footnote. There is a note note note. The amount of– note note note -- the amount of compensation so arrived at in the case of fatal accident claim shall be reduced to one-third. Fatal accident claim one-third in consideration of the expenses which the victim would have incurred towards maintaining himself had it he be alive and amount of compensation shall not be less than 50000 correct So now 50000 if at all now let's see.

Now we'll go back first 15 year person died. Now 60000. My income is 3000 rupees per month so 60000. How much I am supposed to get

One-third reduced.

60000 I got 60000 one-third reduced.

40000.

40000. It should not be less than 50000.

Correct. 40000 but the second note what it shows Not less than 50000. I'll get 50000. So I'll get 50000. This is what the structured formula needs to be read. So maximum is 8 lakhs. All right 8 lakhs. I will be giving 8 lakhs reduced. Straightway 8 lakhs. Then one-third reduced how much it comes

60.

I'm again I'm very bad in mathematics.

It comes to 560.

It comes to

560.

560. All right. Brother says 560. Then this is above the fatal accident. Now 15 15 multiplier multiplier is 15 and 40. Calculate 40 multiplied by 15 Why If it is a permanent disability.

6 lakhs.

How much

6 lakhs.

6 lakhs. And he is getting 560000 correct That was the criticism that when it is applied then that person who is dead the lesser amount is given as per 163A that sometimes that sometimes or in the after some range after sometimes certain range of payment that amount given for the injured person correct

Gurumallamma.

But Gurumallamma this is exact explained in Gurumallamma but we have to accept it. We cannot go beyond the legislature. We are not makers of law. We interpret law and of course in such cases in MV Act it's more case law. Case law we are interpreting but when there is a clear intention of the legislature then there is a question it says that can we give can we interpret this particular schedule in any other way what was intended by the legislature So if at all the legislature wanted to give more money to a person who is injured that is to be given. That is to be given. It is not a very great difference of something. It is a difference of something variable of 80000 60000 15000 something like that but that is to be accepted.

But again this is our Gurumallamma 2009 but 2013 Reshma Kumari and three judges' view is taken that apply Sarla Verma even in fatal accident also either 166 or 163A. I request you to read to read both Sarla Verma also this Reshma Kumari and Gurumallamma also. You may get a different insight.

Friends I must tell you one thing. Yes Supreme Court and High Court they make laws but that trial court judges when we were at this stage the matters which come before us and the evidence which is tendered before us it's a I say it's a mine of or something a treasure of experiences different situations different facts and ultimately these facts these experiences they only invite different case law. So I say that you have to sometimes experiment. You need to experiment some situations come.

Of course you should not give a total tangent go tangent to the Supreme Court law like Sarla Verma you say no this multiplier instead of this multiplier I will use this multiplier. Though there is a case law again after 2000 – after Sarla Verma that it is not a rule of thumb. Sometimes sometimes if time require some deviation is permissible under certain circumstances.

What is required for the trial court judges is this. You must know that basic case law. You may not know a particular case law because it all depends sometimes you know we don't know

because every time it's a factory is going on so you may not be aware of that but necessary is this. You must give reasoning. Give reasons if at all you would say that no this is the second law but you can't go beyond it. First I underline this.

But you come across a particular circumstance which is very special you el and that special circumstance is such which is not at all considered in anyway deal with it. Deal with that and think about it. You may have a difrent thinking. Apply your original thinking in respect of such kind of a circumstance and give reasoning to that particular situation and why you think that a particular compensation is to be given.

See now we know the law that the amount of the compensation which is given which is demanded or which is asked for that is not a benchmark kind of a I mean that is not a limit even if at all that's on the basis of the evidence on the basis of the factors which are placed before us and we el that if at all it is just an adequate to give more than that suppose a lakh 1 lakh rupees 50 more than that you are – it is permissible.

Now this law how it came Because some trial court judge he tried it. He did it and he did it because that issue went before the High Court Supreme Court and the law is let down. So it is when you are working as a trial court judge don't think that your completely originality is gone. It is crushed under this case law. No never. We have to understand case law what is the principle what is let down how it is interpreted a difrent insight is given by these case laws and of course it becomes a law of the land. We can't go beyond 141 142. We can't go beyond that. So we have to follow.

One more now this is about that reading of the schedule. I think it is clear. At least it is clear to some of the judges so that they can discuss and talk. This is what and you el free to come and ask me also. This is one aspect.

Now another important aspect in respect of 163A I must cover now Deepal Soni this is 2004. It let down a law that it is a no fault liability. No fault liability popularity means what The ofnding vehicle I should not – I am a claimant. I should not establish that yes fault lies with the ofnding vehicle. What happened This law was led down. You all have studied the dences -- dences of the insurance company dences of the owner 149 that you must have all have studied.

Now there is one common dence and that is a dence of negligence and a contributory negligence. So negligence is whose Owner will say it's not me. It was he was responsible for this accident and therefore it's not my liability to pay. If he is negligent why should I pay This is the dence of the either the insurance company or--

Owner.

Owner that yes this is the position. Girish in this Deepal Soni three judges' bench said no. It is no fault. Neither owner not the insurance company have this -- such dences are open on this

fault no fault that is a negligence on the point of negligence. Then in the case of Sunitha after – case of Sunitha what happened Yes.

The insurance company canevidence that he was at fault.

He was at fault.

Correct. So Sunitha Sunitha is what is the citation 2011 or '12 Sunitha '12 No it's not. No I have. No no one minute. I have. I have my notes. One minute. No I'll tell you. Deepal Soni is 2004. Then thereafter

Sunitha 2012.

Ma'am 2012.

2012 Sunitha yes 2012 2 SCC the National Insurance Company Vs Sunitha and others. The Division Bench of the Supreme Court held that it is difficult to accept that legislature would fasten such prejudice liability on the insurance company either or the owner. That is what it said in Sunitha. Is that right Then what happened Then thereafter yes.

You can seeSunitha is--

Sunil Kumar is – correct. Now correct then what happened Then Sunil Kumar's judgment came in 2014 (1) SCC 680. In Sunil Kumar judgment what happened The Supreme Court derred from Sunitha's case and it followed a racial let down in Deepal Girishbhai Soni and what happened is it rerred that case to larger bench.

Larger bench.

This Sunil Kumar's -- so now this issue is again pending before larger bench that is because of the Sunil Kumar's case. Now the view is taken. I will read certain I mean just one or two lines observation. That means 163A in Sunitha so division -- Supreme Court held that it is founded on fault liability.

Fault liability.

Fault liability. And in Girish Kumar – in Deepal and in Sunil Kumar both they say that it is a no fault liability. So we have what is the judgement which holds the -- today holds the field is Deepal Soni because it is a larger and though the matters are rerred to the Supreme Court or to the larger bench it is not – we can't stop functioning. Every day we have to decide the matters. Every day we had to give the judgements on these issues so we have to take the view and so far as I el that I'm concerned I think that the view of the larger bench still holds the field and so we have to take it as it is a no fault liability.

Now how the no fault liability For example I am telling you that if at all a person is walking a person is walking on a street and he is crossing met with an accident. I will take an example of that ragpicker's husband. So he comes in between and he dies. Now if it all it is argued by the owner of the vehicle or the insurance company that no it's not the driver of the vehicle ofnding vehicle was responsible for this death but this person only he was drunk. In his post-mortem liquor was found. He was drunk and he was only walking on the road and therefore it's not my responsibility. It is his fault. He is at fault.

Now this I am just giving one example. Another I give you example now in the judgement of I think in Narayan Swami judgement very recent judgement of ACJ it has come. Madras High Court gave. I found it laudable view is taken by Narayan Swami judgement. A boy you know some two three I mean a trip a trip of school children went to a village and it was some education tour. When they went there the boy was say about for a minor you must understand you must note it and you know you must be aware that in the case of minor there is no question of negligence or a contributory negligence. If it is a child -- yes.

In which case

Yeah. I'll give you the citation immediately. In the case if at all he is a minor if a child then child comes running there like you know a 10 year boy suddenly comes in the -- that is considered that you can't say that a child is responsible. It is a minor. You can't have a contributory negligence dence.

Narayan Swami's case I am just giving you the example so that you will get a difrent insight in respect of this negligence and contributory negligence topic. That school -- that study tour went to village and the boys they were all say about 14 or 15 or whatever years old that village was such that and where they were -- they lodged there was no facility of washrooms restrooms. No toilet facilities were provided.

So these boys on the next day they went outside somewhere open place for to meet -- to answer the nature's call. So they went there. Those all three four boys they went and they found one place open. So they said that we will go there and then went there.

And when they were answering nature's call what happened that area that particular big open land was the area of ONGC and it was a land of ONGC and there was certain dynamites something was there or something. It suddenly dynamites or something it blasted and in the blast a boy lost his -- something there was an injury to vital organ his private part and vital organs.

He survived. The claim was filed and in the claim but not claim before the motor vehicle. It was--...

No no.

.....

No something unusual. No claim a petition was filed under 226. Under 226 of Article of Constitution it was a writ petition was filed before Madras High Court and Division Bench entertained it and Division Bench took view we consider Article 21. See now I mean you are all district judges. You know Article 21. It's an umbrella article. Everything under the roof is brought under the 21 Article right to live right to li right to li and then so that 21 is there and under 226 considered High Court considered that we could have told him to go before the Civil Court file petition or the application for damages or and say that it is a contributory negligence was pleaded before the High Court.

But High Court said that we refuse to accept this dence of contributory negligence because one they were minor. Secondly I mean contributory negligence how it did I'll tell you. It accepted to what extent It was 30 70. 30% was settled. Something 11 lakhs and 80000 rupees was compensation was fixed. Out of that 80% 70% was ONGC was directed to pay. Why Open space blast. I mean the place was not secure was not sa dangerous.

Precaution.

Correct precaution. You must appoint some person who will say don't enter. Even if you put you know the plates it is dangerous warning this that it was not there. And the message and another thing we don't know the degree of danger sometimes and sometimes the plates are always under – there are always these instructions are written “Don't spit.” But the persons who are going to spit they don't know English. The problem is they spit on that plate only because they don't know what is spit and they can't read English.

So this is our problem. So it is a problem of the – this is our psychic problem. We think that everybody knows English. That is a problem. So even if at all there are some boards instructions are given whether they were - that was readable whether – and then dangerousness you know the skull and then two bones that is there but there are so many places we see that skull and two bones. I mean we don't understand or we sometimes we lose our sensitivity to understand the degree of danger because there are so many places that is used commonly. So sometimes I el it is a law of diminishing marginal utility in the other sense.

In such cases they should have deputed somebody.

Exactly correct.

They haven't put the thing.....

That's right. Correct.

We also go roaming--

Exactly. The same view is taken by the Division Bench.

If dynamite is put then how a common person would know

Dynamite was blasted. Something is there.

.....30% was deducted--

That I am telling so 30% they caused this liability -- no not deducted.

Okay.

It made a composite negligence.

Okay.

There were two torts Supreme Court held it is because who is the other School school authority. It was binding because that ONGC they said that it is not we. It is the school authority. Who brought them We didn't invite children to come there. It is the school authority brought. School authority allowed them to go. They should pay entire compensation.

30% is paid by the school authority.

And 70% because school is always poor. That we have to take into account. ONGC yes ONGC can pay. So and then say that it is your responsibility again Ryland Vs Fletcher. You just see because see again and again we come across this basic old good law so we have to sometimes whenever we get time again read Simon. Again read what is a jurisprudence on negligence. Then again I see that even position we have to again and again see that. Similarly this old good law all these cases you have to go through that.

So this is a case which says that how the composite negligence was on two torts reasons that is the school as well as ONGC and there is a question of contributory negligence so the dence of contributory negligence is thrown away because he's a minor and how he will come to know. There is no contributory negligence. No facilities of washroom restroom. Where child will go This was the position. Friends I think I also being a judge I watch the watch also I have to keep it. It's relevant. Yes.

... find it very interesting.

Yes. But now this is 163A because see I have to give you the basic I mean the niceties of this particular section. So if at all you have anything about 163A you may ask me within 5 10 minutes and then again we have to take a second.

It was 40000.

Yeah.

It is still 40000.

Yes.

Even minimum wages of an unskilled uneducated labourer has increased to considerable extent.

You are right. You're absolutely right.

So something should be done.

You are right. But that is to be done by the legislature. It's a legislature. Yes.

...giving beyond this structured formula.

Yes.

We are notrecently because lot of times I think this is even the negligence should be amended now.

Yes.

.....

Yes please please.

...Now legislatures will set a maximum limit of 40000 rupees who are getting the benefit of--

That is what legislature.

....163A. If a man having more than income more than 40000 he dies in a motor accident asking to agree and prove the negligence so that they can claim under 163A

No 166 166.

No no 163A is a beneficial ...need not prove the negligence of the wrongdoer. Why this benefit is being denied

Because – I am sorry.

To the person who is having to the legal heirs or the dependents of the person who is having an income more than 40000.

Yes. Yes. Anybody can answer

..... amount to be 40000 it will not be covered under Section 163A. At the initial stage it may not be maintainable. If it is beyond 40000 then he has to convert it or he has to – burden is shared.

No brother see discrimination is made because considering in the beginning only I told you some concession is required to be given that a particular class of the citizens particular. So therefore and some some we have to fix. So therefore the legislature said that all right 40000.

See I'll tell you in many times when I come across the fixing the compensation whenever the appeals come and something I understand the difficulty of the trial court judge is that how much we have to fix it. Sarla Verma is really they have done – gave quite a good objectivity some uniformity in deciding the cases. Otherwise one judge did this one judge did that. Then you know then lawyers forum shopping don't go to that judge. This judge is good like this. No but now that is settled by Sarla Verma.

Now this class is why it is to be considered only because it is a poverty factor of poverty is considered. India we have to consider poverty every time because many people are below poverty line. So how they will prove And therefore I said that a lady who is a ragpicker loses husband how much she will have to go She doesn't know if at all she is illiterate. Structured formula all right just give -- show your income how much Even minimum income is shown as 60 rupee I mean minimum income then that is possible like notional income yes I am coming to that.

Now we have introduced – Supreme Court has introduced a concept of notional income. There is nowhere in our act such kind of a thing.

.... No but the here.

In the Act there is no word--

Schedule as a notional word is not there no anywhere so this is something you know we have invented because we have to -- what is considered for a driver There are so many drivers are there. They die and their wives and their children are coming and claiming compensation but problem is what is the income of a driver Even we have driver. Whether we issue salary certificates to them

Unfortunately in India there are many such jobs are there their salary is not documented. When a salary is not documented or no document is there available to prove his salary then Supreme Court realized a problem of our Indian system and said yes notional income. Take. This is what we should accept. This is what – this is a law develops and therefore this 40000.

Minimum wages you can consider.

We may consider. Brother has some problem. Yes.

No I wanted to just say that 163A....

Yes.

Why Because 120 was there. 166 was there. In between the for a particular class.

Particular strata particular class and therefore that--

And you have to

Yes. And as you said yes we have to then relinquish that person.

...

Yes yes yes.

What we need is a correct way to proceed with 163A as per the--

Reshma Kumari or--

.....

Gurumallamma. I must tell you I tell you one thing. I say that if at all there is a judgement of three judges' bench in the Reshma Kumari I say that you have to follow that but read Reshma Kumari again and again and read Gurumallamma again and again correct See the schedule again and again and if at all you can come across some intelligent interpretation use it. See we don't know.

Therefore I say that you may have a totally different original thinking but what you have to do Give reasons. Justify. We are judges. We have original thinking. So we decide the matters. We just don't dispose off the matters. We decide and therefore after a while going through reading it again and again you may find out some different formula right So I gave you this this is a legal position right

And you have a break whatever 10 minutes 15 what we said and then again we assemble. Again we will discuss some issues and then Dr. Shetty is there.

SESSION 10 - ISSUES & CHALLENGES FACED BY MOTOR ACCIDENT CLAIMS TRIBUNALS

Now we will start our second session some of the judges are yet to come so I will just tell you one I mean sometimes you come across certain different cases everyday but like Multiplier how to use basically. When there is a death of child then what multiplier is to be used what type of income is to be given these are always issues so similarly because child is not earning then how much income. now you have come across Lata Wadhwa case that is supposed to be the landmark case that is about the death of child and compensation to be awarded then lata Wadhwa then M.S garvel case is also these two cases are important on the point of I have not read that case but that is what law is.

...

has a disability not on the point of . So death of a child and how to fix a compensation that is I mean these two cases are beginning like Lata Wadhwa and Gravel that I feel that you please read those cases. Now while fixing the compensation what happens now I am not on 163A we are talking about 166 and some issues that suddenly crop up then how to deal with certain issues I am telling you. Then when we are fixing compensation I always feel that the law some of you must have dealt with land acquisition Act. Under Land Acquisition Act if at all a land is acquired by the state then the state has to give compensation and when state has to give compensation there are certain factors which are to be considered and lot of case laws are also there soil of the land which is acquired then its proximity from the township then yes the potentiality of that particular locality or the land then the water then the trees number of factors are taken into account while deciding the compensation when the land is acquired. Why I am talking about the land acquisition Act is this if at all you have worked as a judge on that deciding issues in that you will know that there is always a chance or there is a expected that it is a matter of imagination you are to always think anticipate imagine then there is a hypothesis is applied sometimes it is so then it must be like that then this is a land which is near to the neighboring land was given a compensation and so there is some neighboring land formula that we have to use. So that in that legislation also it is there is no such fixed formula there is no fixed compensation so whenever there is a matter of compensation then it is up to the judge it is up to the judge of course it is up to the law also the provisions of the law but also up to the judge to decide and when there is no fixed formula I mean like 1+1 is 2 when there is no such formula like 163A it is left to the judge and the judge has to consider the evidence before it but the evidence which is tendered before the judge he has to appreciate it when you have to appreciate it we come to the appreciation of the evidence it comes again to the judge. I mean how it comes to the judge it comes to the judge judge is experienced judge's knowledge of law and judge's wisdom and sensitivity of the judge there are these number of factors which work on the mind of the judge when there is a matter of some kind of imagination some kind of a speculation but in short I will say that it is a matter of discretion in our legal term and when it is a discretion you know the basic principle of discretion correct it is to be judicious it should not be arbitrary and it is to be reasonable correct. So that discretion should not be arbitrary it should be just reasonable judicious discretion so whenever there is more the discretion more the responsibility and when there is more the responsibility it is required we should be more sensitive more cautious more judicious its something judicious so this is what how we work. In a case where old lady died in the morning walk she has come from a very affluent class her age was 78 she went for a morning walk and died her children filed claim husband filed claim. It was pleaded that she was dealing with a share business was having shares of say 10 lacs so that compensation was claimed up to 10 lacs and also more because it is a considered loss of business and more I mean I am just giving you the example. While dealing with such situation one has to consider these are the shares you have to ask the questions whether the shares are transferred to anybody when the shares are transferred in the name of children or husband where is the value loss loss of estate money nothing because the profit or the assets remain same only the change of name so no loss of

income but she died so when she was 78 or whatever then how much you will give. ... last multiplier is 5 as per Sarla Verma column four what it said about above 65 is 5. Yes yes please sit down and just address the group not only me all. ... please make yourself audible.... See you must appreciate the judge has reasoning he is giving his reasoning which is important. You may have a different view its a different point of view but he has reasoning he makes his argument good.... Correct zero like a 90 year old person he has reason because the longevity that is increased so now earlier the I mean 70-75 was the age but now people are working when they are 85. ... That's right that's of no use so usability of the man or the person can be one of the criterion usefulness rather not usability. Yes brother you are right yes you have reasoning but the question is that now... No multiplier correct so therefore person is eighty. if that is used at 80 that comes zero. No no 140 we are definitely considering 140 there is absolutely nothing that 50000 you will get that is there. ... No fault liability will come whether you are 90 or you are hundred that is there...No no I appreciate what he says that we have to deduct two units after 17 that is what he has analysed column 4 but see about shares and that that is no loss but the claim is there above no fault he will get 50000 whosoever the persons are the question is that now I am just saying what we have to see we have to find out what is evidence what evidence is tendered here it comes so judge who is dealing in MACT code should not be passive judge needs to be active not super active but active means what we have to the judge has to sit there and find out whether any evidence justifying the claim has come there or not whether there is any possibility of availability of any evidence but it is kept in the pocket of the lawyer like it happens in the Rent courts rent receipts are given but they are in the pocket of the lawyer they dont produce only this non production of evidence is there or not one has to check it. Now I will give you another ... she went for a walk when she was active that itself shows she alone was walking on the road every morning she used to go question is what about Arun Kumar Agrawal you all must have discussed Arun Kumar Agrawal there is a session I will not touch that judgment but my other some resource person is taking that topic...or 85 years old cannot be considered useless so that we have to keep it in mind wvwn 85 years and sometimes that is what i told you sometimes the evidence is found in the facts itself what he was doing how he died why he died if at all an old man is driving scooter at the age of 80 - 85 fit that is what the evidence itself .. i would like to add something.. if she is doing some social service if she normally a person of this age dies... no .. not earning anything but it is a loss to those children also but they are not dependants they are not legal representatives it is a loss to society but our mv act does not say anything about how ito appreciate the loss to society.. the act is made ofr a particular person who are aggrieved whether criminal or or we say locus now as you raised this issue another point whihc i think i shruti told me ... 140 yes yes .. loss to society person was not earning .. loss to the society.. his age is to be not.. but you pointed out that judgment... which judgment you jsut tell me ... no no correct which law under which act under which case if at all it is there one has to find out because i cannot claim because i am x alright my some old suppose my father or mother dies but she was everytime she was going in the blind school used to read paper to them for 1 hour and there is a loss to society .. society was considered as legal representative no i dont know montford case .. but to who you can give the money but that society again the society has .. reading material

it is there in the reading material but i am not aware of this i must tell i am not aware of this montford ... reading material let us see that maam it is a case of .. a priest and ... yes brother you are right on this point montford brothers of st gabriel and another versus united india insurance it is 2014 supreme court case that is in page number 152 of your this one let us see this is a different view taken just see 152 yes that is our cji p sathasivam but it is a full bench that is ranjan gogoi and shiv kirti singh in that but you read this even i will go through this and explain that where the legal representatives now one minute one minute court explained that the appellants were the legal representatives of the deceased let us go to the legal representatives now come to the point yes this is to be montford that will be read read and then we will come to that now about legal representative under 166 another situation 166 c d these 2 subsections speak about the legal representatives correct there is no word as dependant in the section there is no word as dependant in 166 only legal representative used now legal representative is not defined under the act under section 22 of the cpc we have to ... section 2 (11) of cpc whether section 2 (11) of cpc that meaning is to be given now the question is brother earning more than earnign father earning applicatoin is filed because they are legal representatives compensation is to be given or not that is the question compensation is to be given as legal representativenow the question is where your discretion will come you will have what is their income then what is the income of the deceased that you have to consider because dependant we say what we say the income which is earned that is loss of dependancy we dont say loss of income what we assess loss of income there can be a huge loss of income on the death of the person we assess the loss of dependancy and when we assess there is no word dependant but the law says legal representative and therefore there we have to consider what exactly is the status of the legal representative and his income there there is a provision of the compensation there it is there we have to always keep it in mind it is not a charity it is not a windfall it is not a bonanza that supreme court has said it is not a bonanza but we have to consider that the supreme court has taken i mean it a very beneficial a social approach has been taken by the supreme court which is consistent i say sometime in .. with the concept of welfare state in india but we have to .. that it is not a bonanza because see every vehicle is insured when every vehicle is insured not all the vehicles are going to meet with an accident not all the vehicles are going to be offending vehicles but all the vehicles they pay insurance so there is a good amount of duty with insurance companies also but sometimes the insurance companies they claim that they are running in losses everything is gone losses so we are in losses so we caqnt but this is only of many times when the vehicle are there but they are not insured or they have not paid the insurance this one policies but there is also a big rise in the number of .. compensation claims and so now where we were we were at the legal representatives i have put you one more point i have to cover 2 3 more aspects but i have to also give time to doctor you take your time no no but 1 2 3 just legal point like this .. this is a general question i am putting this dependancy in cases where the married sister married daughter claims married daughter claims and married son both claim what you will do .. only two ...father lost or mother lost.. there are only 2 dependants i say ... claimants 2 claimants both are right one male and one female we will have to see the dependancy what .. the traditional... etc etc emotional i mean ... distributed equally equally that

is a correct approach because in some time some cases i think manzoori ... that it is taken that married daughter also can be given andhra pradesh has taken a view because because it is matter of ...because what ever right because legal representative we have to allow the view is taken she is lr legal heir and when lr is there i mean legal heir is there then what we have to see schedule it comes under the succession act when she is entitled to this then why she cannot be entitled to compensation so this is a very much gender related issue i am happy that we are all gender sensitised because you know sometimes what happens the view is taken that she is a married daughter how can she be given she is not to be given there is no question of this because at all if she is getting ... absolutely right this is ... i think i have to cover about valid license another point this is i think that might have been considered by defences ... but i must tell you 1 thing in short.. if there is 149 the defences are there the valid license is a statutory defence if license is issued there can be situation ...clear breach driving vehicle without having license. clear breach insurance company has good case but now supreme court has also said liability is on whom insurance company to prove that he was not holding license so the burden see how the burden you have to understand see how the burden is completely on the insurance company so insurance company is expected to examine atleast 1 witness from rto and he must take that no such license is issued in the name of this xyz then exonerated insurance company is completely exonerated discharged from this liability swaran singh 2004 supreme court you must read swaran singh threadbare thats one another important ruling and also in swaran singh interestingly situation that s a different i say innovation of supreme court effectively license and duly licensed these 2 terms are explained wonderfully we have to read section yes section 3 3 5 where is that act this act what is the word the necessity of license under section 5 3 yes 3 section 3 what is said i just draw your attention to section 3 1 please read bare act .. read read for the class no person shall No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.—(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do. right so there what is mentioned on effective unless he holds an effective driving licence effective corrective unless he holds an effective driving license right come to 149 duly license right 149 i had mentioned i dont remembered 149 refers to roman 2 101 page number page number 101 of the act 149 1 duty of insurer correct but come to 2 2a 2 a no sum shall be payable no ok that there has been a breach of a specified condition of the policy now dont read 1 roman 2 a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification in swaran singh the supreme court picked up these 2 phrases and what swaran singh supreme court said i just read somewhere that is effective license under 3 1 of the act and duly licensed used

under 149 2 a roman 2 of mv act once the driving license is obtained he falls under the category of duly license once it is obtained and if license is lapsed and then he is not holding effective license contemplated under section 3 of the mv act once a person is qualified to drive the vehicle and obtains a license and thereafter not holding a valid license after lapse of the period then it is not a fundamental breach court held once you get the license you know driving you may not be your driving license lapsed you are negligent you are not bothered to renew it it doesn't mean that you are there is a fundamental breach that is the concept in swaran singh in para 105 of the judgment the supreme court had this finding a concept of fundamental breach that insurance company cannot be exonerated from the liability to indemnify the insured now the thing is that this is what I felt I mentioned swaran singh case steps short at a particular stage on a point to what length of period is to be considered as a valid in case of renewal of license under section 148 suppose if at all because you know then there is also judgment of ram babu tiwari I will just put this you may read ram babu tiwari also 2008 there is a gap of 3 years accident as taken place in that and the supreme court has taken into account section 15 yes maam removal of driving license exactly section 15 of the mv act and where the 30 days is given for renewal and held insurance company is not liable to pay compensation as it is breach of policy so ram babu tiwari in 2008 has taken a different view but because they say it is a period of 3 years swaran singh has taken a view effective license and duly license and now the thing is that it steps short bombay high court has taken a view that it is gap and that once you know the driving it is a duly licensed then that amount can be given at least pay and recover subsequently that is what is ... and this is the now we are on the defences excuse maam I would like to ask if he has not got it renewed and 90% you can say it was due to negligence second could be it was due to his handicap one reason you are absolutely right then he has to put in his defence driver is supposed to .. insurance company has to ...if a person goes abroad for 3 years yes he has license in india he is not ...that he will prove that for this much time I was outside india so I was I could not get it renewed as she said will the yes please will the ... my point is something different what I wanted to say is I could not get my license renewed for 3 years because I went abroad after 3 years I came to india and I say that see when I was coming my son came to pick me from the airport and while coming from the airport to my house I met with the accident this is a hypothetical situation I met with an accident so I look to the evidence see my passport for this much time I was abroad and I could not get it renewed and before I could get it renewed I met with an accident I .. now the insurance 3 years have lapsed he should be exonerated .. but here sir it helps .. no correct correct I am telling you bombay high court has taken a view that there can be pay and recover and even if at all it is a situation that he was in a position to... then the liability will pass on to the insurance company the bombay judgment is regarding fake license or without any no ... the insurance company is exonerated fake license ... bombay high court judgment is regarding the case where the person could not get his license renewed no renewed how much period is not explained in swaran singh this is again a gap and if at all you are saying what your point is that the person he became kind of handicap and then he lost his life capacity to drive and still he was driving that you insurance company will have to prove now another point 149 as we are talking about defences adds to another point that is pending

before the supreme court that is sunil kumar referred to this 2 points in sunil kumar case first we have to go little back see insurance company only statutory defences are available to the company 149 this .. insurance company cannot take the defence of negligence because negligence is not available as a statutory isnt it because 149 doesnt say anything about negligence does it say no so that defence is not available to the insurance company unless insurance company moves application under section 170 of the mv act so insurance company has to move application under 170 trial court passes order even one ... they say filed or rejected but ... insurance company is free to take defence of negligence correct now this was the issue before the supreme court what happened it is an old case in see in ... case in a case of nicoletta rohatgi also the supreme court taken a view just see that if the permission is not taken under 170 insurance company has no appeal insurance company appeal is to be dismissed even in josphine also in 13 so nicolletta rohatgi judgment is the law 170 no application you are throwing it you are dismissing because you have no you have not asked for that defence again there is a judgment of sheela ndutta a view was taken by the supreme court and that the it is not correct when the defence is available if owner doesnt come owner doesnt is not interested in contesting the matter or appeal is not interested in takking the plea or taking the matter in appeal and that entire liability comes on the insurance company who is affected person insurance company because it has to pay from the pocket under the law so file an appeal who has to file the insurance company has to file but to deny how to the insurance copmany will anticipate that the owner will not appeal at that stage so there fore even if the application is not filed under 170 the insurer then in appeal insurance company that appeal is to be entertained only regarding 170 but it is to be entertained and it is to be decided you cant dismiss it that view was taken in sheela duttas case and then another in sunil kumars case this was again these issues are pending before the larger bench but in appellate court this is mainly on the appellate mainly before teh high court this issue will not come before you therefore i am telling you 170 application is made you must understand the what is the seriousness of this application routinely throw it or not no then 2 points i will make and then finish correct but the that you must know that is why i am putting this 2 cases i will refer to on different points and one is that use of term arising out of the use of motor vehicle arising out of the use of motor vehicle 163 A no 166 163A also and 166 also 166 take out section quickly and 166 yes see 166 what it says compensation arising out of the accident of a use of motor vehcile now you listne to it you read it quietly carefully qwhat happens what is meant by arising out of the use of motor vehcile in the case of shivaji nanu patil versus vastala uttam more this is a case of bombay high court from bombay high court appeallate it went to supreme court reported in 1991 acj 777 now i will just give you just in short a tanker .. it was a case of 86 87 this accident occurred and finally i disposed off the appeals 3 4 years back i disposed off appeals try to understand 1987 this happened and many times tat was challenged it went to the supreme court and sent back the short point involved is this a tanker was going from that satara it was filled with petrol or diesel petrol tanker when it was going it toppled it was full and the driver lost control it toppled it went there and the driver and the cleaner they were just running around they found it was not possible such a huge thing so one went to some place because at that time cell phones were not avaiabale in 1987 so he went running to inform

through phone his owner of the tanker that this is the position of your vehicle so he went so as he went he phoned his owner that this is the position and our tanker is there lying so he said ok this happened sometime around 4 3 o'clock in the morning the tanker was lying that driver and cleaner they were around they were just relaxing waiting something will come somebody will come lifting that crane and then we can work what happened in between the villagers from the vicinity those they were going for nature's call see our they don't have toilets they just go out so they went and somehow there was they found that there was a little leakage it started leaking and somebody smelt petrol and they found that some drops are coming down so he said whatever he has got for water he poured it and he came and started filling with petrol he told everybody they said you are getting it also should get you know Indian mentality then everybody wanted that drop drop petrol then this is a one other third fourth fifth seventh village all of them came there and one was very enthusiastic he thought of that I will do something he just went for it and then something inside that it suddenly oozed a little more it was petrol just it oozed a little more it came from the tanker and somebody biddi what happened big explosion just exploded I think many people 30 or something there was persons were there there was a big noise in that many people lost their lives many people were injured they got burnt and many children were there they lost their lives because they were supposed to go to morning school so they were there around 5 o'clock 6 o'clock children and children lost their lives this was a case this point it was the trial court judge recorded evidence everything and framed issues that no this is not out of use of the motor vehicle see the terms how each term has importance in the not in the use of the motor vehicle how it falls under the motor vehicle act where is an accident there is no accident it can at the most be before the civil court and not in this court of course there is damage but they went to high court and supreme court and the supreme court high court took a view that it is arising out of the motor vehicle went to supreme court it upheld and therefore this is a case under 140 first initially then again after evidence so this is a I am giving you in short this was the case what supreme court took a view is important so I will just read the particular passage it was section 140 that time because it was said that even the no fault liability is not there it was not arising out of the because under 166 and 140 the words are arising out of use in our opinion the word use has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of the vehicle does not cease on account of the vehicle having been rendered immobile on account of break down or mechanical defect or accident in the circumstances it cannot be said that petrol tanker was not in use at the time when it was lying on its side after collision with the truck I think truck there was a collision with the truck not toppled but this view was taken by the supreme court and still it holds that is it is considered as a good law how long how far this concept of arising out of can be stretched it cannot be also that you can learn and you can get the insight then last part just give the citation of the case you have just mentioned Shivaji Patil versus Vatsaluttam more thank you maam thanks a lot that is 1999 ACJ 777 then one last it is absolutely it need it is worth reading ... that is right... there is also one more judgement Geeta Devi yes Geeta Devi some then one point I want to take and that's all yes now about when we are talking about this stationary thing and other see what happens there is a case like motor vehicle is standing the driver parked vehicle and after parking vehicle

what he does he just sometime ... so that vehicle is stationary and when he was there the cleaner there is something some trolley comes and says move the vehicle so then he says ok somebody says .. he takes the key starts and takes reverse child or a person something child could also be there or a person who is standing some impact and the person dies on the spot now the question is the cleaner is not having a license not having a license now when he is not holding license who is the liability... one at a time please.... correct ... there is no... i want to show you something i want to show you a section there is let us read our bare act i treat it as our bible I ALWAYS TAKE THE bare texts as bible read cpc crpc again and again what happens now i was discussing with my brother what happens because of this net facility everything is available the lawyers also what they do valid license they give command they get so many printouts so many cases they just throw all these before us it becomes cumbersome for us and we have to read and they say no trial judge has not considered this ruling that ruling it becomes difficult one thing we have to tell them give me only whatever last law you read and tell me if you are giving 10 case laws that means you have not read cull out and then you tick that's right i am not going to consider you just tell me that we can .. then it is necessary for us to read the bare texts because we read case law and then we don't read bare texts that is another problem but now in this case cleaner is not having a valid license not having a license at all he did not know how to drive insurance company can he was not a person who drove and caused accident was not having license so driver was not holding valid license statutory differences breach of policy 149 we will not pay but no law does not stop there it goes further read section 5 this is last madam take your time as much as you want no this will go on otherwise section 5 read somebody read No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle. correct section 3 you read one line 3 says Necessity for driving license that means you cannot drive without driving license 4 deals with age limit in connection with driving of correct that means the eligibility who can be given the driving license that is 3 and 4 now section 5 refers to section 3 and 4 right but what it says responsibility of owners of come to the section no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.`so what it means who is in charge driver who is in charge it is supposed to be the driver and if the driver is in charge it is section 5 says the responsibility is of the owner or the person in charge of vehicle driver means the driver when he is not driving he is still having the control this is having the control over the vehicle is never it continues even if he steps out of that vehicle your control over the vehicle is not seized you are still the person having control over the vehicle and therefore section 5 will come into play and therefore insurance company is responsible to pay this is what the no owner or person in charge of the vehicle so the words are used owner and person in charge with view to give wider meaning to concept of control of the vehicle owner and driver are not used but deliberately opted for the words owner and person in charge so it is entirely the responsibility of the driver to take precaution when the vehicle is parked or stationary therefore a stationary vehicle should not become a mobile should not become mobile without his consent or control so his control over the vehicle is not seized when the vehicle is parked the process of being the person in charge it continues now there

is one more last now last excuse maam the entire responsibility of the cleaner who in the absence of the driver without his consent is entirely washed off the cleaner is not see how much cleaner will pay try to undersna he is not incharge but what wrong he had done can it be forgiven we cannot forgive but but compensation who will give that is what we say if at the driver is not having a license insurance company will be exonerated right see even we have to understand this when we go out we also keep our vehicle it is our responsibility... owner of the vehicle is responsible because he has to pay he is responsible that is what is the vicarious liability .. that is what correct this is also that is also to be considered insurance company you give ... you are the holder of valid driving license the insurance company has insured and the person just takes and .. parking whether he has license or not we dont know just think about it he is a driver regular service then he has to but like dont .. contributory negligence composite the person is theater owner to park in valet parking and gives even the hotel in hotels they take it and they say that we park we feel it is a very good service and we are attended but it is expected that he is having a valid license number of things are there but therefore law is developing this is what i am pointing out this is the position and one word about 149 no 169 167 those sections you read properly 167 claims instituted before motor vehicle tribunal and also under workmen compensation act they are not permitted but the thing is that there is also a very good view is taken by justice ramanna in andhra pradesh some laxmi judgment i will give you shruti when he was judge there a very different view is taken you consider...claims because difference in the liability because that is a strict liability under the workmen compensation and statutory liability the word used is in the course of employment that is different but 2 2 places you cant give that you should receive money otherwise ... sympathetically thank you very much i must and one thing.. i think that will be and then we will stop... section 4 no what are you asking .. yes yes ... section 12 is an appeal you have to file that certificate unless that certificate is there it cannot be entertained one minute...just one minute... see yes please a small question maamin all metropolitan cities like delhi 163a the usual case is like the person is going on his bike or on his car and sometime his car slips his bike slips he collided with the or there is no pillion rider or occupant simply he is driving and all such kind of cases are being filed under 163a of motor vehicle act how to tackle no fault no fault but the question is that if at all there is a he is asking the insurance company of his own motor cycle you pay me i have insured this motorcycle i used it all the ingredients of section 163A are covered no wrongful act no negligence is required and you no but there we have to see if it is the act on the policy because act on the policy will be the ... here no fault .. nature of policy take it to be a third party policy his application will be dismissed act on policy is ... then he is not ... such cases have to be dismissed yes if at all we are flooded with such kind of cases no see the act on the policy or it is .. nature of policy has to be seen nature of policy is to be seen that we have seen all the policies are third party policies still they are filing it you give reasoning and either you allow it so that will be you will further ...the law will be taken further ... later judgment ... what is the nature of the policy ... it says i am the victim .. you must understand if at it is insured then you can ask if at all the vehicle is not insured where you will go ... and what type of policy if it is an act on the policy you are not covered if it is a personal policy if it is composite you are covered you have to

apply ultimately it depends on how much premium you pay and special circumstances there are not in case of 2 pillion riders 2 if it is not covered now the view is that can be considered the view is that the driver is carrying 2 pillion riders of course but that is not a statutory defence under 149 no but 170 see anyway now of course there are many issues what came to me i took up but i mean the appreciation of evidence is important here and when you say that the document the fir or punchnama in such cases some proof is there but punchnama fir you have to just see that what little bit you have to read in this way whether the document is proved or what document proves that you have to also consider don't insist on proof of a document see what document proves that you have to consider always remember that no driver will accept that it is my fault because many times in punchnama statement of driver si same a person is dead and person alive will say it is he was responsible he was negligent and not i so that is to be filtered by you you should not say oh it is mentioned in the punchnama that the person who died is negligent so contributory negligence straightway watered down contributory negligence also you have say 30 60 70 but the example which i cited a person who is driving his bike and he slips the contention is that this bike anyway you formulate that also we can consider i want to read one poem for you and then i end it no what i i just read this poem it is a very beautiful poem and i stop then dr shetty will take charge of the further session i don't want to read this poem when he will start because i just don't want to say a word i want to attend his session dr harish shetty i introduced him he himself is a brand and excellent lectures and psychoanalysis of the matters especially witnesses complainant excellent in all our family cases family matters he guides judges counsellors and it enables us to it helps us to understand the issue more i read this Death of an Innocent I went to a party Mom I remembered what you said. You told me not to drink Mom So I drank soda instead. I really felt proud inside Mom The way you said I would. I didn't drink and drive Mom Even though the others said I should. I know I did the right thing Mom I know you are always right. Now the party is finally ending Mom As everyone is driving out of sight. As I got into my car Mom I knew I'd get home in one piece. Because of the way you raised me responsible and sweet. I started to drive away Mom But as I pulled out into the road other car didn't see me Mom And hit me like a load. As I lay there on the pavement Mom I hear the policeman say "The other guy is drunk" Mom And now I'm the one who will pay. I'm lying here dying Mom... I wish you'd get here soon. How could this happen to me Mom My life just burst like a balloon. There is blood all around me Mom And most of it is mine. I hear the medic say Mom I'll die in a short time. I just wanted to tell you Mom I swear I didn't drink. It was the others Mom. The others didn't think. He was probably at the same party as I. The only difference is he drank And I will die. Why do people drink Mom It can ruin your whole life. I'm feeling sharp pains now. Pains just like a knife. The guy who hit me is walking Mom And I don't think it's fair. I'm lying here dying And all he can do is stare. Tell my brother not to cry Mom. Tell Daddy to be brave. And when I go to heaven Mom Put "Daddy's Girl" on my grave. Someone should have told him Mom Not to drink and drive. If only they had told him Mom I would still be alive. My breath is getting shorter Mom. I'm becoming very scared. Please don't cry for me Mom. When I needed you you were always there. I have one last question Mom. Before I say good bye. I didn't drink and drive So why am I the one to die i always feel sad whenever i read i feel the words

somebody i mean we cant imagine what is the pain and suffering of parents who lose their maam this is jagjit singh's son he was that famous ghazal sometimes parents say they are not asking any compensation thought they yes because nothing can life cannot be compensated we are husband and wife he was the only son we .. our act says that life cannot be compensated .. not a single that is why i find it makes some sense in 163a the compensation to injured is less is more is more because he survives and he has to spend and he has to live with that disability thank you very much these are beautiful lines maam. we have 2 options we can break for a short tea break ten minutes or i can get the tea served here which you prefer 10 minutes we will come back and then

SESSION 11 - MEDICAL & PSYCHOLOGICAL NEEDS OF VICTIMS OF ROAD ACCIDENTS

okay I think we will begin we have spent a lot of time on our tea break I think we will extend it to Lunch a little bit. So we have with us Dr. Harish Shetty and I turn the session over to him.

...Each one you had something to say which was very new to me and each one of you are looking very healthy and you all smiling great and a good tea and interesting though those who feel like participating are sitting on the front benches and the rest can reflect from the entire participation are sitting on the...How many of you are met with accidents accidents real accidents ... Yes sir Kaha hua tha please sit down sir.. But when you talk now about the accident do you see images of the accident yes every time... It comes no you cant forget that day and along with the picture does something happen to your body at that time kya hota hai sir what happened sir I think what he is explaining is something very relevant to our discussion now the point is mental health is not really understood and accepted not by you guys but by the world. in fact in India everybody has an opinion in politics cricket and mental health. Unfortunately there are lot of beliefs I still remember the day I worked for one year at Latur after the earthquake I still remember the first workshop organised by the government where the IAS officer... he said we have built all the villages and as far as the mental symptoms are concerned time is the best healer and I had to stand up and say if the fan above your head falls on your head will you say time is the best healer I will you put a bandage on the leaking skull...Time is not always the best healer that's one myth which is really very important for us to understand and this is a myth because in our own belief system Samay se sab kuch thik nahi hota hai time is not always the best healer. The second myth which is very very important for us to understand in this context is that compensation heals mental wounds in disasters in accidents in fact when I worked at Kandla for a year we worked with the salt pan workers for a year and we saw two groups those with whom we had medical intervention they used the compensation money effectively and those who did not have medical intervention they spent the compensation money on building temples or all religious structures putting ads in papers for the death for the missing people so most of the compensation money is misused when the grief is not handled so compensation money does not heal mental health issues that is the second important

myth which we ... third is if he is physically alright he becomes mentally alright fracture heal hua hai he ahs gone home he is moving so which means everything is okay but what is very important to understand that physical wounds are visible mental wounds are something absolutely invisible and that is something we need to really look at and accept and the fourth most important myth is God will help everybody its all Karma vo accident kyu hua something he has done wrong in his life so he has met with an accident I still remember the conversation between Mr. Mahatma gandhi and Rabindranath Tagore in the 1943 earthquake in Bihar Mahatma gandhi said this earthquake is because of the oppression and exploitation of our Indians by the upper caste and Tagore got up and say Tagore could only stop him nobody else could stop him at that point of time he said we need to find answers in time so God praying to God etc its all because of God's wish also inhibits the way how we look at things let us not talk about the accident its over lets go ahead Indians have this beautiful thing when we go and visit somebody's house where there is a death we always say look ahead aage dekho you have children look ahead and the person inside says my husband has passed away you do not know how I feel I cant look ahead and I am in a miserable shape now. Looking ahead dont worry everything will be alright and the worst sentence we use when we meet people who have had accidents deaths I understand how you feel you do not understand how they feel and the best way to share is I do not understand how you feel and I do not understand your pain but I am with you is a much better sentence so God and family comes in very very strongly when you have belief. When you have an accident we always believe in fact policy makers governments NGOs believe that first we need to take him to the hospital which is absolutely correct belief I mean he has to be taken to the hospital and first we have to heal the fractures and the injuries but the most important thing at this point of time is mental health professional is never involved in the first place because everybody believes now its his life and we need to really take care of him otherwise there is no point he will be in a cube inside and in ICCu you cant do any mental health intervention the point is the mental health intervention has to start from day one with his close relatives because accident is not a problem of the victim its a problem of the family so what is very important for us to do at that point of time is we tell doctors orthopaedic surgeons physicians etc dont worry may be a good nurse who knows emotional first aid or somebody if you can in your place start talking to the family because at that point of time the families go through a lot of turmoil ultimately disability is not physical its also emotional it can be measured and there are scales which have been gazetted by the government of India to measure emotional disability. One scale is known as IDEAS which has been made by Scarce from Chennai so to be very good is that we need to start mental intervention from day one. Lets expand the scope of accidents to earthquakes they will say first thing is safety chat and food and the mental health worker should work in the first phase of the disaster and provide help they should not say we will come later let everything get well and we will give professional mental intervention but mental intervention as it starts first with the family and that is something which is very much missed in our interaction because victim is not a victim but family is a victim. Now when you look at all this fracture is a phrase which will stick in your mind you will remember this for life I am sure about that because most of the times when we meet somebody who is emotionally upset I still remember

you were there in the workshop when I raised the issue of suicides at Kota you heard what it is said from Rajasthan we know the reason because of IIT too much pressure because our belief system is such there has to be a cause sprain of the mind there is a cause...which means if his son does a little badly with exams he is upset but that is just strain of mind he will talk to his friends he will get well and he will be alright but if somebody close to him has met with an accident and that person is in the hospital he sees the picture of the accident even today after how many years two years and he still feels that something happens to him inside so at that point of time the mind is fractured assume it is fractured but Indians are great pravachankars people who come there there is convergence after the accident I am there for you are not there you will go home everybody starts giving him and say something nice to him he does not want something nice he wants to be left alone and you have to be with him all of us in India would want to say something to him and everybody needs an explanation how the accident happened what was he doing I mean simple mental intervention but factually the mind dont you look at the cause I take my car and pretend. Arresting me will not heal his fracture you cant chase a mosquito after you get malaria simple logic. Hindi they say sir mool bhoot karan root cause Indians are obsessed with the root cause what is the root cause forget the root cause tell me the root cause here there is fracture of mind at that point of time he is at an immediate impact phase o accident once he gains consciousness the mother says what happened most of them do not remember if they have an injury on the head as sir said some of them if they had injury on the head they may not remember you have to leave him like that you dont have to ask him what happened so in the immediate impact phase they are in the state of shock. Some of them might not sleep at all you could sleep sir in the first two days you could sleep well I am not looking for a patient.I tried to save a cow So that meaning in life came up that existential thing actually came up so... What is very important is keeping them away from curious visitors is a very big medical intervention the gate keeper at gate in mental health we have in research we have a gate keeper screens all the visitors says not you abhi nahi jo kuch kehna hai hume kaho keep a book to write your thing because it is for the people's guilt that they go and meet I have gone and main jakar aya I had gone and given my attendance I saw him oh my God what a bad shape he was in not important at all so in the immediate impact phase you need to have protection from curious visitors physical assessment and safety. Sometimes we underestimate and over estimate the medical facilities available in that hospital Indians have this peculiar habit jaan to bach gaya tahnk God he is alive do char haddi toot gaya to kya ho gya ho jayega thik but if you do not handles the bones at that time effectively he is going to have a lifetime disability which is physical as well as emotional. Americans are precise when they do something on the body the joke is the doctor finds two fractures then the fellow says...the point is if he is alive it is God's wish but we need to really look at his body with a fine tooth comb and see everything which has been damaged or disturbed. People coming together everybody coming together 50 people all building all mohalla everybody is there every body making call nowadays there are mobile what to do what not to do what we do is give me a list of your friends and we given them time and date when to meet him take turns three three people they can meet him fir six months if you give terms to people

to meet you they can meet you. You have some experience to share because you are smiling a lot on this have you met someone like this no

... so what we do is what we advice is take the list send them all home today Monday you come for three hours on Tuesday you come so that they can come for next three months and really be with. Sir that is precisely a reason when something some mis happening happen whether it is an accident or disease nowadays people prefer not to reveal it to anyone only to some people not only to some people because some people would definitely tell other people only it is the members who reside in the family... Those who matter absolutely my son met with an accident that time this pill worked. Now ra ra lectures chest thumping cheer leaders look at me I met three accidents but still I am standing so families also bring these inspiring people to talk does not work. Inside he is using all the choicest abuses not to meet them. And the fourth is whether it is suicide or accident suicide is the accident of mind remember this please suicide is accident of the mind okay kitne bar kaha tereko us raste par mat jao gaiya bahut aate hain too many cows on the road your mother must have said that to you. And the biggest competitors of all judges and doctors are astrologer all these interventions delays recovery. May be some family members feel nice he is alive I am not against your astrological beliefs but what is very important is beliefs interferes with rational intervention and beliefs keep on shifting when rational science enters the man and there is much more and there are lot of people the guy who met with accident always say I was driving at 20 km/ hour always and he never says that I was driving fast the signal was green then I went there for me the victim is also the person who has n=met with the accident an who has been on the other side. ... Oh really! very nice. So now as the impact phase goes away there is an immediate post impact phase what is important is early intervention helps hypertension diabetes malaria or mental health issues. Early invention is the key to all activities. After sometime 3-4 days he/she starts talking honestly to his close friends what happened actually I was on the phone I actually did not see and the bike came in and hit me dont tell my mother. You need to provide the space for the person to share his or her feelings. Also there are Indian families have a lot of shame and regret kisi ko mat bolna dont tell anybody tell them he is admitted for dengue and we will send him to his village so after he becomes alright we will bring him back. So sharing of feeling is very important. Listening is the big casualty in the Indian environment. India is full of 120 crore pravachankars allow somebody to talk they go on talking and they feel that after they talk they feel nice they dont know whether the person feels I went and gave him good advice and you ask the uncle what advice did you give I told him drive slowly wear a helmet and he said he will listen to me. So but the point is we need to listen to the person who has met with an accident and the point is listening is the most difficult exercise you guys do it very well judges are I see you people on the chair and listening to the lawyers what is happening inside your mind we do not know. You are good listeners but you all listen sometimes when a advocate asks for dates you also get angry inside na so he is asking for adjournment I will not leave him next time. But the point is good listening is the attribute of a judge and at that point of time we ... we tell the family we allow the family to share all the emotions aisa kaisa hua kabhi nahi hua never happened aree it happened now. You know if hear if some is dead who died today somebody would tell yesterday i met yesterday he was alive but he is gone he is gone today so

allow the family to share all the emotions there will be lot of automatic thoughts automatic feelings remember in life people who are aware of automatic thoughts and automatic feelings people would do very well in life. Like you must have heard that Dr. Harish Shetty would be coming what was the automatic thought you had kon hai shetty kon hai psychiatrist kyun bulaya humlog to sab thik hai so automatic thoughts and automatic sensations are something which you need to be aware of. People who meditate you do vipasna yog or may form of meditation are able to watch their mind and when they actually watch their mind they are able to listen to the close as they are automatic thoughts might say why is he talking again and again. In fact the victim of the accident would repeat the story again and again after few days of the accident he continue repeating it again and again. I still remember this incident at Marathwada at Kandla and at the riots I worked in Gujarat for six months after the riots at Anandkheda where Amrita ben was the ...what is very important there is people share their grief accident or a roit or a disaster they talk continuously and listening is very difficult at that time but family members should take turns Maa bolti hai mera beta hai mai jaungi hi nahi kahi... and the smartness is to take turns help the family take turns help the families take turns in bringing the grief down so what is very important is allow the family to take turns and see that they dont get burnt up. Now he will talk repeatedly ye hota hai ye hota hai...I will give you an example if I hit sir on his hand here hi skin will become red after that they will be oozing and if I allow that ooze slowly new skin will come and the skin will get healed but if I hit his hands and it oozes and if I close the wound the wound will get infected. So what is very important either the body or the mind what is very important is allowing the person to repeat his stories again and again but most of the times rescue operations after an accident will say come on now you start eating your food start your routine again jitna jaldi routine me jayega utna fast acha ho jaega sometimes it does not work...Now which is the story of your life which comes to you again and again happy memory of your life one of the happiest memory of your life I am sorry to ask you...

... That is something which will never leave your mind. But so much emotion no that time. You also have one memory of the accident she also has one memory now why are these memories lasting why are these two memories lasting why you are right but why Yes ma'am... Because this memory.. I will tell you why why because it has emotions locked in the event emotions are still locked in the event. See image becomes imagery imagery becomes memory memory becomes pleasant or unpleasant because of the emotions associated with and ...intrusive memories is a consequence mental health consequence of an accident and this is something which needs to be dealt much earlier image becomes imagery imagery me... How many of you have lost your parents or grand parents so on the first few days when our father or mother is lost we cry we talk about the person but slowly that emotion would go away and then we also recollect happy memories about our parents and we talk about him or her in a manner with a smile when the same time we may satill cry. So any event which has inclusive thoughts some inclusive thoughts can be painful and others could be very memorable and joyish. Next is anxiety those who have met with an accident will not feel the same way exactly all their lives like I will give you an example Housing.com is a big.com in India it was started by IIt drop out with four IITians; one day they wanted to go for a party night as the ma'am said one girl had a car they did not have a car the girl employee said you

go in my car I will go on the scooter and in that car four IITians two died because two on the back seat had no belt the two on the front seat lived but the girl suffered a lot of guilt it was her car her car and she landed up in hospital ...under extreme anxiety she did not sleep and she had an epileptic attack so anxiety is not only the right of the victim but a right of a lot of people who are associated with the incident and that is something for us which we really need to look ... one of the participants said I mean how will she sleep if she has lost two people in the accident it is natural for her to not sleep so we tend to resign to the faith that these things will be normal and these things dont need any intervention time is the best healer the point is we need to intervene early not that we need to give any pill to her ...If you do not intervene for a long time what happens I still remember while working at Kandla... and those areas there was a family we did this intervention with normal people because mental health is not rocket science if malaria eradication programme can be done by anganwadi worker then suicide prevention ca be done by an anganwadi worker also you need a specialist at some level so I still remember this family where two of them died in this event a husband died and a daughter in law died three people in the family the mother and two sons they would not eat together guess why thinking that it is inauspicious what else guess why So why do they not eat together haa so what they do painful memories are repressed rape victims are not able to recall the entire incident unless there is a psychological intervention painful memories are repressed good memories are always brought out and experienced so they would say we will not eat together because we will remember about the event and we will start crying together which is not good. Another myth is tears are abnormal crying is not good we should forget...tears are actually liberating and sometimes I wonder why the male handkerchiefs are big while female handkerchiefs are small its interesting point why bar bar wash krna padega why is the myth female handkerchief is small you want to say something sir anybody wants to say something Most of the times ma'am the answer I get from all audience is especially men girls cry a lot...What the answer sir is mostly girls cry it gets wet then I give my handkerchief that's what most of the men say but not all. But the point is giving legitimacy to tears especially tears of men is extremely important in recovery in fact we have a workshop only on tears for four hours because men do not cry and men are not supposed to cry so its extremely important for us to understand that grief and pain are important and let people cry together families that cry together live happily...in fact men die early because of blocking of emotions okay so sir said if man cries how ill others feel the point is if you cry your sons will say my father is normal he is not God he is like he will not fell weak at all. So again crying making it legitimate is something which is very good interaction now in Bombay ma'am if you remember 92 blasts after that there was an accident in the train where 25 women jumped out of the train and they were...one is anxiety there is a startled reaction any noise you might feel startled...So there was this blast in 1992 where now Mr. Yakub Memon got hanged for the same blast after that blast everybody was thinking of the bomb so there was strain which going in the Bombay and in the Ladies compartment somebody said Bomb and 28 women jumped... in Punjab which was affected by terrorism people were extremely tense and anxious at some point of time and after the blast in Bombay people would always look at things up the shelf so hyper arousal be alert is also a system which is caused because of accident or any disaster. Now if you intervene

say for example whenever in motor vehicles act unfortunately has no mention about emotional intervention or compensation for emotional disability as somebody said in the afternoon it is not linked with your PWD Act this Act has mental illness as a disability isn't it apart from physical problems mental retardation and illness but in our Act there is no mention about emotional disability and any compensation for the same. Now what we can do here but the point is no assessment of emotional disability just because the fracture is healed would not mean the person is functional what is very important is getting assessment mental assessment along with the physical assessment immediately after the event and after periodic intervals to find out if the person has acute stress reaction or post traumatic stress disorder I would like you all to read about PTSD this assessment is not made at all and this assessment is not looked at all and the families also would not want to talk about it. Now as I said in that family at Kadla people would not come together because they were avoiding the problem and they were repressing the entire issue. Avoidance is also one symptom so what is the symptom you see after the disaster anxiety insomnia infusing memories which come against your will fourth is startled reaction hyper vigilance hyper arousal and at the end also you have existential dilemma. what is this life for ...Now I still remember there was this accident there was a flood in Bombay two cars they rolled the glass and at Mithibai college they got drowned now they were all Kuchhis from Gujarat because Mithibai college had lot of Gujarati students so I went to the families they said we have done we went to the pilgrimage I said of course you should go to the pilgrimage that also heals but that family members would not go on to the road where their kids died because of the floods where the Car got drowned and they could not open the glass so what we did we took them on the roads slowly and closure of event is one most important taking them to the accident site and allowing them to feel what they would feel and seem the entire event as if it has happened sometime back my son was here he got drowned he must have really choked on his water he must have felt sad and doing a small ritual there and coming back also helps post traumatic stress and healing because ultimately there has to be some closure of the wound and avoiding repressing denying as ma'am said in India the biggest philosophy is to deny really cause a lot of heart ache and grief. You relive the entire event as if it is happening now... Generally considered to be the best healer. So I would like to say that time is not always the best healer. Strain of the mind is when love affection holidays prayers dhaga dhora works but when it is fracture of the mind intervention is a must and that is something we need to look at. You cannot have closure for all the wounds in life some pain always lingers and remain but as far as our work is concerned there are five points which I would like to close mental health wounds are invisible physical wounds are visible mental health health wounds are visible only when you look for it please ask for the questions you all ask on the Dias would actually decide the fate of the victim and the joy is in asking the right question please ask for a diagnosis if any or a mental health report of the patient of the victim number one. Number two when you look at the report sometimes you get a very vague report as you all have experienced in other spheres he is not driving he is now feeling sad he is now cooking he is little praying no ask for a proper scientific report if you are not happy with the report let the report come from somebody who is more experienced and more specialised. You build that issue along with your other interventions.

Three constantly keep yourself updated on PTSD and in the court of you ask a few questions to the victims or the victim's family they would also understand that you care for the victim not only the physical state but also the mental state and my friend time is not always the best healer fracture of the mind would need interventions. Memories cannot be erased but the energy around the memories can be released so that the memory becomes you have re-framed the entire event to say that its okay but that was strain of the mind.... absolutely sir you are right it will depend on person to person but remember sir multiple fractures heavy physical disability poor support systems poverty will cause will need more intervention than that. You were saying something sir... I will reframe what he says he is saying all of us are not normal all the time we are vulnerable to our own emotions but somehow we are in balance within and without there are some pain which we can live with there is no person who is free from all pain and who has not struggled in his life handling pain so the point is we are all somehow in different phases of life with some main and we are all normal in that sense. I stop here. any questions Two questions and we will be finished.... Like in the football match it is a fowl that fellow cries till the other person gets a punishment. In mental assessment we can look at malingering and can remove the factor of malingering when we assess the person. It happens all the time malingering means lying jhooth bolna intentional lying so that can be easily managed. I was told and I heard madam saying that you are all original thinkers and my job is to raise issues in a short time so this issue becomes a part of your work but if I were you what I would do after this session was as I look at the victim I would not look only at the medical report I will ask also for a mental health report number 1 I would also look at ways of seeing that mental health intervention is done for the victim or the accused as and when its possible third is I would read about PTSD on phone on google and make myself aware of what it is and if had three minutes more in my interaction with the victim I would ask him abhi tumko bar bar vichar aate hai kya abhi tumhari zindagi thk hua hai kya I will give an analogy on the same when we work with schools on suicide prevention all the teachers would say vo to ekdum acha tha kuch hua hi nahi and when we talk to our psychiatrist we should ask about suicide in every person whom they meet in the clinic but they have not been trained to ask so when we start asking so I would say sir please make mental health narrative as important as the legal and the physical narratives in your mind. Thank you.... yeah yeah wait there is a scale which is known as IDEAS which has been mandated and gazetted by the Indian government to assess mental health disability. Though learning disability has not been there are no scales for learning disability but for major mental illness government of India has gazetted a scale known as IDEAS and which is there across the country. In a government hospital they will use that scale and you will be able to get some assessment....

SESSION 12- ASSESSING NON- PECUNIARY DAMAGES AND LOSS IN MACT CASES

Shall I intrude you sleeping tiredness no. Good afternoon. Still I find somebody in good mood to sleep was the food very good of course no doubt anyway I will try to make as far as possible not to sleep. Thank you ma'am. See there are ways two ways to give a lecture number one as the

judges normally do they go by judgement and as presiding officers you may find it very very useful to get and gather more judgments so that you can use it in a court of law. Today I just want to make a small deviation let me not go for much judgments let me just go by the concepts behind them what made the judges to give such a grant so that we can be a person who thinks because the topic is not judgment based on facts or any scientific formula the grant of non pecuniary damages is something very difficult to achieve and very very difficult to even calculate and assess. So here the judges are very much worried about giving more amount alleging complains of favouritism and something else and when I had a chance to appear as a delinquent judicial officer in a corruption case in a departmental enquiry the explanation he has given that whenever I give more amount as sympathy I am accused of being favourable to the claimants so this is unfortunate development in our country. So there are judgments which give very tartly amount for this kind of damages fearing or apprehending unnecessary complaints in the future but if we know the formula or the doctrines or concepts or dogmas behind the grant of non pecuniary damages these kinds of doubts can be easily set aside. So the one and the most important judgments which I request you to by heart for the purpose of deciding what extent of grant of this non pecuniary in 1995. This is a judgment by the SC of India as the law was very very debatable and unsettled and doubtful SC top it off by giving this judgment this was given by then CJ of India J. Akhmadi. Now I will tell you 1995 1 SCC 551 so as all of you are senior most judges there is no question of giving introduction of the topic but the purpose of giving this damage is effect of ... just putting a kind of solace for the wounded souls and wounded bodies. They serve as the palate or provide the plaintiff with the means of purchasing alternative form of happiness. Unless we understand that what we are giving is what is called supplying an omission and what is called supplying the omission in the form of filling up the gap or in the form of giving an alternative form of happiness or help we may not be doing full justice for the claimants for otherwise rendered invalid or loosing their beloved ones so with the practice of the courts is not to subdivide initially the Indian courts were inclined to grant a sum without dividing pecuniary and non pecuniary so the SC said that dont do it you would have seen the the ... format fro the claims where we have got separate columns for pecuniary damages and non pecuniary. the practice came into force only after this judgement so I have seen some judgments where the courts have given a consolidated form of judgment its a very bad practice of escaping our responsibility so the court calls upon all the judges to decipher the heads into two basic division number one is pecuniary number two is non pecuniary. proper consideration cannot be given to the plaintiff without taking upon various heads of the loss he has suffered. So the arrangement of the division is based on the loss the victim has suffered it is very important. So this judgment says that the purpose of giving the non pecuniary is for atonement of sin by the tortfeasor. See the tortfeasor may be the driver or indirectly the driver or owner cum driver so he is not going to pay the compensation to the victim so it is only the presiding officers like you who are going to supply the required solace so if a sufficient amount of compensation is paid the sin committed by the driver is atoned si=0 what could be the what is called prayaschit what the driver can do and we are doing in the form of judgment so please see that the grant of non pecuniary is a kind of the atonement for the sin committed by the drivers it is kind of the social responsibility we

have. Now section 168 of the ... Act is very specific on the heads of compensation it is not something outside the framework of the Act. See it has got heads called mental shock pain and suffering and loss of amenities of life loss of earning capacity short end expectation of life options of matrimonial prospects education on social opportunities loss of beauty or loss on account of disfigurement this may take the shape of non pecuniary damage. Normally a grant of medical expenses is a pecuniary damages in the absence of any proof of required sum for future medical expenses because the surgical costs may go up so the courts are supposed to go for a guess work so the grant of future medical expenses has got some what is called non pecuniary element and you please mind that the SC has held it very clearly in 1995 ... the grant of future medical expenses will not carry interest but I find most of the judges or granting interest including the future medical expenses there are at least in Tamil Nadu I would say the interest is the payment granted saying that we are reimbursing whatever the amount spent by the injured claimant towards medical expense or the compensation is a matter of right of the victim to get it done we are with holding the payment we means the respondents. So the court said the respondents are withholding the payment of behalf of the claimants the amount belongs to the claimant we are with holding for the purpose of quantification so only we are granting interest under section 160 172 of the Motor Vehicles Act but when the amount to be granted is not the amount spent by the victim or it is not the amount quantified at the time of trial where is the question of payment of interest on future medical expenses. The SC says in 1995 1 SCC 551 the grant of future medical expenses cannot carry any interest at all it is in the penultimate parallel judgment it is there in the foot note also the court should not grant any interest on the future medical expenses. Then these three are the normal head of pecuniary damages which we are all very much aware of where we have the proof of expenses so when we go for this is the broad based category of non pecuniary damages first is damage for mental and physical shock or pain and suffering who already suffered or is likely to suffer see this is a very important act see the grant of non pecuniary need not always the shock he has already suffered what is the suffering he is going to sustain in the future is also matter of our consideration. Number two damages to compensate the loss of amenities in life and number three for exploitation of life inconvenience hardship disappointment frustration and mental stress. Hardly I find a judgment covering what is called mental stress do we find any judgment for the grant of mental stress why dont we are we here to just say copy and paste CPC is not just copy and paste code now see where is the grant of mental stress in life its mental agony how much you grant so it is a package I should say So it is not a package you dont give two items as separately what prevents you to grant separately why not Am I only fragmenting your opinion. So mental agony may not be equated with mental pain and suffering. what is mental stress see suppose a person has lost a limb or his arm is amputated either below the knee or below the arm is he not supposed to undergo a strenuous stress throughout his life whenever he is viewed by the society or whenever he is feeling an element of self pity which head you are giving under which head you are giving compensation suffering do you mean suffering means mental stress also are you sure what about your opinion is the word suffering following pain and suffering inclusive of mental stress in life what you do is different what we are supposed to do is the matter under consideration....is the

suffering not physical what do you mean by suffer I suffered an element of mental stress both are equal. When you say suffering is attracted to physical ailment or it is both mental as well as physical. Both. So when suffering is appropriate word to include mental stress in life we seldom attain the mental stress in life we seldom attend the mental stress in the form of suffering how much have you written in your judgments giving value for suffering of have you ever explained what is called suffering by him mentally the trauma he has undergone ...If we were I take your example there is a night called the alternative employment for the disability for example if he has given alternative job do you see that he is not little for these kinds of compensation if he is compensated by getting an alternative employment in the office capacity though not a driver is he not entitled to the grant of thewhat you all are doing is just you are allotting online so he would have suffered so and so what is the avocation he was carrying on what was the injury he has suffered what was the impact of the injury on him so I grant so and so is not the case we are doing. Even the SC does not do if that would be the case I am the happiest person in the world because I would say the district judges or the special clan of judges who deal with the your... some may get elevated some may get get retired but you people are having a rich experience of appreciating the evidence it is before your hands see the HC judges are never going to see the victim in their eyes but you people have the advantage of seeing the plight of the victim or the plight of the widow or the bereaved family you know acted he smart in the witness box he would have acted smart like a cine actor you would have come to know his real suffering his emotions everything is known to you so cant you think a little bit more than adopting what is their in the judgments of the SC of India and HC in which way you are debarred from thinking more what law prevents you from granting a compensation under head of mental stress in life will the HC say no to you they will be happy. See the amount is justified if you have more heads of compensation. A grant of 2 crore will not be an amount of so much of enormisity if the heads are properly ...because I am dealing with a case where a man from Dubai who came on vacation has undergone accident lost both his limbs above knee he has got a prosthesis at the cost of 3 lacs every three years he has to replace the prosthesis so he cannot climb very effectively somebody has to carry him in his shoulders to carry him to my office just like vetal just imagine the plight of the person attending him and now he says his wife is not even giving regard to him at all which normally your wife will be very considerable considerate when the husband is invalid this wife has become otherwise she has been accusing him saying you are good for nothing go to hell and the daughter says my mother never takes care of my father. So this is the case where a judge is supposed to think more whether he is fitted with an artificial limb or not the stress he undergoes every night or when he see people running can he run with a prosthesis in case of an emergency can he run out of the... this relative disadvantages the law has not even taken care of at least I can request these 35 presiding officers can take up this job. ...not on years so what I request you you can supply omission by putting questions to the claimant directly. I remember one judge Mr. Sathikumar was in Tamil Nadu he used to ...So this is is longevity of life on account of short end life then finally the inconvenience hardship discomfort disappointment discomfort frustration mental stress there are 6 broad band category so it is not mere discomfort it is inconvenience

number two is hardship discomfort disappointment frustration and mental stress in life. I think we have to obtain though not six at least two or three may be attended. Then there are judgments you may rely upon to decide what are all the factors to be considered for the grant of non pecuniary damages. Helen Rebelo may be of less importance Mahadeva Shetty is a judgment which is loss of amenities of life what I have spoken for the past 5 minutes is spoken in 5 volumes in Mahadeva Shtetty's case it is 2003 7 SCC 197 where the SC says compensation has to be just compensation not ...determination by tribunal has to be rational based on judicial approach. Suffering of the mind the first ground the court says is the suffering of the mind than the body. You ask any person who lost their spouse or son in accident I remember a case where I think RK Malik where the Sc says whenever the mother sees the mirror in the morning what she sees is only the face of the deceased son or daughter not her face this is what is called as the suffering of the mind of the claimants. suffering of the mind shortening of life expectancy loss of earning capacity performance of the permanence of the disability like amputation cases it is going to be loss for ever and they should be considered as against what what are all the factors to consider loss of amenities by comparing this with a particular parameter you have to decide what are the factors to be considered for loss of amenities any idea That is very broad based can you go for a customized or itemized thing for compensation.....Now I just want to name the parameters with which his present condition may be compared with which factors you compare his present life to give compensation for loss of amenities a formula for comparison there is a fixed formula with which you compare the present position that is the formula to grant loss of amenities SC says in Mahadeva Shetty's case. These are not followed by any of the courts including SC therefore I am having more emphasis on this one so I am telling you to follow because it has been settled by the SC nobody can question you you are not going to do anything which is not there in the statute book or in the judgments what is there in 1995 is something though provoking our judges never think in terms of the same now I am sorry to say if you dont mind. See this court says the loss of amenities should be compared against the backdrop of age marital status and his ability so you have to compare his present day as you said with his ability as he was able to cross his leg or climb the stairs or run or walk hs age and his marital status this is the factor to consider to grant non pecuniary damages to loss of ability. Then these cases or normally these are all bible for pecuniary damages here the court also considers the alleviation point or mitigating point of the story these most are pecuniary but a small tinge is there for non pecuniary you can take as guideline. Then Ajay Kumar v Raj Kumar which is Bible for injury cases there is one paragraph which you may just go through to decide the court has given a methodology to be followed in case of grant of compensation non pecuniary also in para number 5 of judgment of Ajay Kumar v Raj Kumar 2011 1 ACJ 1 SC it is not there in the slide. So the court says after describing what is called pecuniary and non pecuniary the SC has given an example nearly 8 heads of compensation and has given an example in case of fatal accidents what could be considered as pecuniary and non pecuniary. In case of personal injury what could be considered as pecuniary and non pecuniary. The court says assessment of non pecuniary damages item 4 5& 6 which are pain and suffering amenities and expectation of life involves determination of lump sum amount with reference to circumstances such as age nature of injury deprivation of injury and

disability suffered by the claimant and the effect thereof on the future life of the claimant. So Raj Kumar's case is an eye opener in the grant of non pecuniary para 5 gives a better example of what to be granted and what not to be granted. Then we have got one case called Govind Yadav in 2012...where the SC has given an elaborate formula for what could be granted for loss of amenities of life this is the only judgment according to me where it has spent much labour on amenities of life the SC says the appellant is entitled to an enhanced rate of interest and increased compensation for loss of amenities and enjoyment by giving a formula of how to grant it. So none of the grant under the non pecuniary is not defined. everything is settled we are not looking upon it because we are not given by the claimant's counsel I cant expect insurance counsel to be very fair and neutral to give all this to you ... but the claimant's counsel they only depend upon the sympathy factor they pay the court fee there ends their duty so it is for you to take the initiative so if we come to know that the law is settled we can at least follow the law by seeing the settled position of law this Govind yadav is an authority for judgment regarding amenities of life. the Court says we shall now consider whether the compensation awarded to the appellant is just and reasonable and he is entitled to enhance the compensation or any of the following. This is the formula you have to follow loss of earning due to amputation or injury loss of future earnings on account of permanent disability future medical expenses compensation for pain suffering and trauma caused due to the injury loss of amenities including prospects of marriage and loss of expectation of life this is a very simple formula where you can assess non pecuniary damage is there anything covered out of this factors according to your idea any other heads... dis figuration there is a famous case called Rekha Jain as a famous cine actress or model SC has given multiple of compensation than by the HC its a good case I think there is one case called Manjula where a 19 year old college student suffered an amputation and Sapna a 17 year old college student has got crushed injury SC has given 17 lacs these are all the judgments see I dont believe on going on judgments alone that's why I am sorry to say that if I go on giving judgments I need at least one whole day and it is not going to serve the purpose you are all senior most judges you know what is the law. The purpose of my endeavour is to see that let us think in terms of understanding the concept and giving more compensation which they deserve it is not the question on filling up the blanks as against the column that's what the claimants certificate do so this formula is given by the SC in Govind yadav case. Finally I have a question for you I think 6 of you will answer my question otherwise I wont leave this place right ready for the challenge What is called the loss of life estate.....Income from property you mean to take the typical meaning of the word estate..okay. Why females are very absent you are the torchbearers and you need more and you deserve more you will answer only if I ask the question tell me ma'am what do you mean by loss of assets...Who is from Karnataka so its a good news for you by J. R V Ravindran as he was in the SC before his alleviation and J. Patil they gave a beautiful judgment on loss of estate have you ever come across the accident took place in Tamil Nadu the husband was in Coimbatore the wife was living some other place they were living separately the court has given a beautiful different and practicable formula but nobody has followed so far even J. Arvindran has not followed when he came to Sc because some judgments are against his own view. Anybody else I just want to know what is meant by loss of estate ...So

according to you the income he would have earned by utilising his property before his death. ... no in case of fatal accidents potential of the deceased good good answer according to you it is potential potential to earn more money from the property he was holding. Yes anybody any answer for Karnataka I am see I saw that only yesterday I dot boast to be a person who knows this my junior from Madurai has sent me a judgment yesterday i just asked her to give a copy today... ... my question is out of what out of his own ability or skill as he said or out of the property left as he said everything combined effect of his skill and property....any other answers ...from what I just want to know the source from which the loss is calculated so nothing but a comparative study what he was doing before his death and what he is the family is earning now....See we all think well than the HC judges if I am not mistaken the answers are more interesting than the court has given in judgments all of you are right in saying that the definition of the word loss of estate the Karnataka HC has given as a percentage of the loss of income attributed to the property he was holding before the accident so it is something income from the real estate but the formula the court has given is something very appalling the court has given three different examples of assessment of I am not going to read it fully it is left for the academy to educate you by settling the judgment it is running fir nearly 8 pages if I read it will take at least 1 hour ...the case is there when the husband was in Coimbatore and the wife was in some other city near the Coimbatore they were both employed living separately not sharing a common household because of employment and husband died in accident I dont know how the claim came to be filed in Mysore I dont know... Good for the country because the judgment is very elaborate what happened the court says three different situation the court says where the husband and the wife live in the same room wife dependent upon the husband's income or wife not employed or husband and wife residing separately both are employed so there is no dependency financially for the husband or vice versa number three there are non dependant claimant. Yesterday I was talking to Shruti ma'am who is entitled for compensation as a legal heir or dependant or legal representatives this judgment may throw some light on the transactions the court says ultimately after discussing for nearly 8-10 pages loss of estate is one third or one fourth or 15% deoending upon the size of the family are there judgemnt is ...its a beautiful judgment in case of being followed it will give more amount for the claimants under the head of life estate so please go through it is not a formula to be deciphered it is very easy to follow the test is whether the husband or wife is living in the same room or living separate or any of the claimants are non dependant claimant on the deceased. So if it is in same house it is 1/3rd of the loss of income so just imagine what is the difference if it is separate house it is 1/4th if it is non dependant legal heir it is 15% 15% or 1/3rd or 1/4th of amount you fix for loss of income by following multiplying just imagine how much we are not giving to the claimants do any of you have the mind to follow judgment in next case law or you have apprehension of.....the court says no we give loss of life estate 5000 or 10000 just to make it rounded off or a decorative piece of this head is not attended to or the type ...that's what is said is it a judgment it s sub silentio is Sarla verma is a judgment on loss of life estate see a judgment is binding a precedent only when it is addressed answered and judgment rendered something is sub silentio there is no judgment SC to my little knowledge regarding loss of life estate....Ok what we are doing before Sarla Verma

for... now we are giving 1 lac why not you do instead of SC following or dictating terms to you which court said no to you where is the bar See I will say I will come to funeral expenses now we give 25000 SC says in one case Rajesh v. ... it is not an expense meant for lighting the funeral power it is broad package starting from the ambulance charges till the first anniversary of the death in case of Brahmin community in case of Christians in case of Muslims they spend a lot on the coffin or something can you just bury a body with 25000 rs you will have to pay to bury and Muslims also the same and it costs more for Christians see why dont we think in terms of giving more amount for funeral expenses who is going to bombard you I had been to my family one of my family members died I went to the ... and one orphan body came there the mother was having only 5000 in her hands till the end of the day the person in charge refused to bury the body she was lying and crying and what not unfortunate I didnt have because I never carry money in the funeral I had only credit card which has got no use there I sent my wife home got some money and paid her. So with the half hearted money the job was done I think he dug only 3 feet instead of 6 feet. See we should be in a position to understand the amount of 5000 or 25000 is nothing for the expenses... or not the dead body or the persons entitled to under article 21 is not a decent funeral under article 21 dignity cant you just write a single line more on this what prevents us tell me ...I think in Calcutta they only throw.....No where are we see Puttamma's case they speak of price index do we follow this now See when in 1994 the Act was amended they give 5000 funeral expense we are in 2016 our salary has increased everything is increased have we ever increased the grant why why not See in Puttamma's case the SC has given direction to the government of India all you know that in ... the last clause says that the government has got a right to amend the schedule as and when required depending upon the sprawling price rises the government has been in deep slumber from 1994 till date there is no mandamus by the SC the SC has given a mandamus in 2014 in Puttamma's case even in the amended Act there is not much difference. Is your hands tied See we have got new formula which is not in the Act where is the question of deduction of 1/3rd and 1/4th which is not there in the Act ... are you not supposed to go beyond the Act where is the question for 50% deduction for batch list does the Act provide for it where is the question for giving more amount for non earning person 15000 per anum now we are giving 6000 per notional income per anum when these are possible why not ...The dead body has got every right to be buried decently we cannot throw it in the bay of Bengal we cannot throw it in the well as Parsis do in Mumbai so what I just request you people you have got ample power grant of compensation in India has got only heads no sealing except 163 A where the sealing is 40000 per anum where is the bar or sealing in the Act to fix an upper amount for any grant in 1994 they fixed 15000 can you follow it now of you give 15000 who is going to say no. Just a matter of advice get on word in evidence for the purpose of burying a body in our religion we need at least so and so in the minimum you give the minimum so this is what I understand from what is called non pecuniary damages it is nit governed by any hard and fast rule so we have got something what is called loss of amenities of life explained and we have got loss of estate partly explained though not fully and we have some idea about what could be granted towards funeral expenses and mental suffering and you all are well aware that you can cover stress or mental stress in suffering pain is

also agony is different from pain so mental pain coupled with agony and suffering is it not possible or forbidden in the MBA Act why we are not doing is because we are not doing it because there is no evidence or the claimant counsel is not doing anything or we are constrained by time. In Tamil Nadu are court is supposed to dispose 80 cases per month humanly impossible in each and every HC how much time they spend for delivering judgment 6 minutes at the most. Have you seen this in Times of India yesterday any of you Number of time a judge spent in HC to dispose off cases throughout the country it is 2-3 minutes in Bombay 6 minutes in Calcutta and 2 min in SC because of your work they do it in a very short time what is you are doing is the ground work they are reaping the fruits but our object is not to see this. The person who has come to the court with a fond hope of getting justice by spending a huge amount towards court and very huge amount for the advocates he does not know who the judge is going to occupy the chair he sees the system as the court of law the men are immaterial to him advocates are not going to do service after a part of time but judges we got a solemn duty to see that the person who has come to the court with all the fond hope his expectations are met with. We are not going to see who is he what is he what is his color race its immaterial but all we do is following the settle what I say is the settled law nothing is not there on the paper. Now the SC says in Rajesh case all you know minimum 1 lac for loss of concession minimum 1 lac for loss of love and affection for each of the claimants minor children and in case of funeral expenses 5000-25000 the accident was in year something else judgment was in I think 2013 but the accident do we ever see the date of accident If I have the judgment of Rajesh I can see the date of accident at times even the SC does not see the date of accident 5/10/2007 we are ten years ahead of that one can we just follow the 2007 what is called price index for our salary your salary do I charge the same amount for the client which I charged in 2007 we get pay revision why do we go for pay revision so my earnest appeal as an advocate who has got some soft corner for the claimant not out of sympathy not out of pity its only you people like presiding officer can do more justice than a HC or SC judge can do because not many cases go to appeal or not many judges follow SC because it is not applicable to all the cases but all cases come to you we are the lawyers to court where all people come to you from whom there is very few appeal so please I will tell you to grab the opportunity non pecuniary damages can occupy as much as 30% of the total compensation if we follow the judgments scrupulously. Dont be in a haste what I say is only just an idea you please go through I will ask her to give t to you or mail or something. Karnataka people find it easy because it is binding on them but for us it is persuasive only. So with this I think I covered most...

SESSION 14- ASSESSMENT OF DISABILITY

Good morning my dear sisters and brothers of our judicial paternity and this is our occasion to know each others. I mean this is a place as I term BYKYS know your brothers know your sisters here all over India. You are the officers by this time you have acquired a lot of experience particularly in the challenging society challenging issues all over the country where phishing

because of socio economic conditions which really blended with the diversities. It really varies from place to place and culture ethos and everything because some places in our country are yet to develop the degree of discipline as far as the traffic rules and other things are concerned and some places are highly sensitized in discipline with this atmosphere we are to work so we face a lot of problem. Now today the topics for this session are assessment of disability so our eminent expert Dr. Leonard has come over here to enlighten us rather to share his experience own field which is a specialized and technical field which we require all the time while deciding the issues because as you know the element of disability is one of the factors to award damaged in case of Motor Accident Claims cases. The extent of disability is important factor to award compensation extent means we know percentage we know the visual extent of disability but disability in my view I will discuss later on is a very very absurdly objective element disability for example a rickshaw puller in an accident lost two legs he is absolutely on artificial limbs but this artificial limbs is not a substitute for natural really his livelihood is totally taken away because of accident his disability in a given situation would be total although it may happen that 75% from medical point of view but having regard to his means of livelihood his disability is total because he is illiterate he has no means to earn question is whether this disability has taken away his meaningful leading life that is the important aspect you have to bear in mind. But I am a judge I lost my two legs in an accident I have got artificial limbs I can walk I can climb can I be termed to be 80% or 90% disable though I am still working am I right But then question of disability is 80% may not be 80% but mental shock trauma etc and in the area of loss of consortium also because when I am having a complete physically abled I am having a normal leg in moving around in moving around and doing swimming playing golf and etc which the fellow judge ad everything but after loss of my limbs I cannot play Golf so I am losing my consortium of my fellow colleagues. It may so happen my sons and daughters may not be they will be sympathetic but they will not be honest and sincere under this and so to say loving and care will not be there I will be living on sympathy so this is a loss of this is a mental shock partial perpetuate my mind so what is the disability state and how we can quantify and how we can judge or award compensation these are the very finer point I think in ... we want to refresh we need to refresh our mind because stereotype work we have done in initial orientation stage application made loss of limbs so award compensation this we have done but in a specialised sense highly intellectual is a creative retreat some element of creativity what I say loss of consortium can be stated in various ways. So now our expert doctor will enlighten us and share his experience how he adjudged his ability I will give you a little later this few examples I have come across in my 18 years of practice as a judge and 16 years of practice as a lawyer so this will perhaps help you in future times to go and to think how to adjudicate and decide the issues. May I just request and call upon Dr. Leonard to share your experience please and also educate me on this field of orthopaedic ...

Thank you very much sir thank you for setting the tone for assessment of ... I come from Chennai and I work in this Hospital at Chennai most of you may wonder what a beautiful hospital it is those of you who follow Tamil Nadu politics will be aware that this building was purpose built for an assembly converted to a hospital and its a great opportunity to be working in this hospital because

although it is a government hospital its like a corporate government hospital and my interest in disability assessment actually picked up when I was an assistant professor representing the government regularly in the Lok Adalats at Madras HC. Among 7 types of disability the one which really as the learned judge said affects the quality of life in an individual who had undergone an accident whatever it may be is the locomotive or orthopaedic disability. So how does this disability come to happen initially it starts with physical impairment physical impairment the leads on to functional limitation limitation of functions and eventually crystallizes as disability. Physical impairment is defined as a permanent or transitory psychological or anatomical loss and or abnormality of an affected part it could be the upper limb the lower limb or the spine or an amputated limb. This then causes limitation of function that is restricts the ability of the individual in terms of functions. So functional limitation is a condition which can be partial or total inability to perform those activities necessary for motor sensory and mental functions within a range and manner in which a human being is normally capable or should normally be able to like walking lifting a bag of rice or seeing speaking hearing reading all activities of daily living if there is any restriction or limitation in any of these functions that person is coined or termed as disabled. Now this limitation or function can be short term it can be reversible or it could be progressive alternatively it could be long term permanent or regressive. Whatever the case may be this limitation or function has to be quantified and there is no role for saying in my opinion there is no personal opinion here. that brings us to the final disability as such. Disability is defined as any restriction or lack of ability to perform an activity in a manner or within the range considered normal for human being. If any person following a road traffic accident is unable to perform any activity as that of a normal person that is disability which may vary from person to person in varying degrees. Finally lets see the medico-legal definition of disability. The medical definition as doctors we say disability is physical impairment and inability to perform physical functions normally before a judge decides compensation disability is a permanent injury to the body for which the person should or should not be compensated. So in MACT cases disabilities can range from upper limbs lower limbs the amputees and due to spine injuries. So each component the upper limb the lower limb the spine and amputees are assessed individually. One thing to remember is upper limb is responsible for function and the lower limb is responsible for stability and mobility. Functional assessment assessment of the upper limb lets take the right upper limb. Majority of us are right hander which we call right hand dominant and in assessing an injury to the right upper limb there are two components the arm component and the hand wrist and above the hand. There are certain guidelines which have been published and recommended from 2001 also with a Gazette notification and these are the guidelines which we follow when we assess a person as to the percentage of disability of that particular part of the body. Now lets come to assessment lets say we are assessing the right upper limb in a dominant person dominant right upper limb. Upper limb as I said earlier is responsible for function and how do we go about assessing the loss or function in the right upper limb. The guidelines to be followed are:

- 1) it depends on the measure of functional impairment how much your function is lost and this assessment should and must be made only after 12-18 months because that is the time period after

the initial injury the disability has plateaued and its not going to get any worse and its not going to get any better. you must remember there are two components to it and the arm component that is the upper arm and the fore arm that's the arm component and the hand component. The arm component has got three joints the shoulder joint the elbow and the wrist joint so each joint has to be assessed individually and what do you assess in the arm component you want to assess the range of motion the muscle strength and the coordinated activities. I will talk about each in the following slides and the hand component has got three variables which is the prevention the sensation and the strength of the hand. So once you work out the loss of impairment loss of function loss of strength and loss of coordinated movements for each joint separately you put all that together and then you work out the loss of the hand component separately and then you add the arm component and hand component. One thing its very simple there is only one formula you have to use right away through and that is the combination formula if you just remember one formula you can work out the loss of disability in the upper limb lower limb spine ... everything. All you have to remember is $A+B \times 90 - A/90/A$ is always the higher value. If you remember this formula this is what I will keep repeating in later my talk apply the combination formula this is a great formula and it works out the percentage very well although as the learned judge said at the end of the day you may arrive at a great formula but that cannot be the entire compensation for the patient as such. To come again we are talking about the right upper limb arm component has got three variables the shoulder elbow and the wrist joint and the hand component has got three variables that is loss of retention loss of sensation and loss of strength. Now assess what do you assess in somebody with an injury to the right upper limb damage to the shoulder joint three things range of motion there are three range of motion in the shoulder joint which is- forward flexion that is taking the arm forward that is taking the arm away from the body that is abduction and putting your shirt button and the women putting the bra hook that is internal rotation. So you wont assess how much of each moment is lost and loss of muscle strength. How do you assess muscle strength you have to assess it by the medical research council grading wherein 5 is normal 0 is no moment at all I will come to that a little later in detail then you have to assess the coordinated activities which has 10 variables. Now we will see how you assess the loss of motion movement in the right shoulder joint. As I said in the bottom of my slide there are three movements- forward flexion abduction and rotations. Normal is 180 180 and 90 and this particular person the range of movement available is 90 90 & 45 so there is 50% loss of all three ranges of motion of the shoulder joint so you add that all divided by 3 you still end up with 50% loss and as we saw earlier shoulder joint is 30% of the arm component so you multiply it 0.30 and the loss of function in the shoulder joint in terms of movement is 15% so three components loss of function loss of muscle strength loss of coordinated. So now we have worked out the loss of function as 15%. Next you have to work out the loss of muscle strength how do we do it Medical research council grading zero is no movement at all which gets a 100% say for example somebody who has a fall from a tree and then they try to cling on to the branch just before the fall at the bottom and that causes a severe abduction injury. The nerves for the shoulder arm forearm everything comes out from the neck so in such an injury the nerves get yanked. That person will have a what we call a flay limb although it may look that the person has

got an entire dominant upper limb there will be no movement at all. So that is considered as zero. If that person after the injury say at 12-18 months following the injury has just got the flicker of movements that is great one and that person is able to move the limb lying in a bed if he is able to move it along the bed it is grade two. If that person is able to lift the hand off the bed that is grade three that is against gravity and grade four is when that person is lifting the hand off the bed you put your finger and he try and stop it and if he is able to resist your hand and still lift it up its against gravity and against resistance that's grade four five is normal. So based on that lets say this person has got a grade three so that works out to 12% so we are already worked out the range of motion as 15% and loss of muscle strength is 12% and we have got to do one more thing loss of coordinated activities. This is the list of coordinated activities that is recommended these are all activities of daily living like combing your hair putting your shirt on buttoning your shirt tying your dhoti writing holding a glass of water drinking and depending on what activity the patient is not able to do you multiply that by 9*M and you have a percentage. So you have a percentage for all the three now loss of movement loss of muscle strength and loss of coordinated activities. Now with all these three you apply the combination formula. So A B and C- A is loss of range of motion B is loss of muscle strength so $A+B *90-A/90$ gives you a value that is D. And then you apply the similar formula to work out the loss of coordinated movement you have to add $B+c*90-D$ which is higher so the end result of this total value of the loss of the arm component is 19.5% so this is only for the shoulder joint so you have to work out the loss of range of motion loss of muscle strength and loss of coordinated movement for the elbow and for the wrist individually so you have three values for three joints and then you apply the combination formula. Then you get a final end result for disability of the arm component. When you have three variables you take A+B you apply the formula you get D then for the third variable you add $D+C$Exactly whichever is higher will be A we can apply more than one limbs or you have to calculate for one limb separately the other limb separately and then apply the combination formula once...quiet rightly sir. I have seen this happen and the percentage has significantly dropped and the compensation also for per patient is significantly less because the insurance company wants a lesser value they dont want to part with more money but if this is applied they get a decent compensation....Without applying this formula

let our expert finishes his presentation you take note of and have your queries and I shall give a time slot then you have because by this time we have gained experience here purpose is that to input expertise more because in a changing society and circumstances let him make his presentation fully the after that any queries we shall give you time slot you give yourself introduction and this is the way we can do it otherwise it will be what you are instantly coming. This is a systematic way we can learn everyone because the questions you are putting that question he is having answer now and he may not have an answer so idea is that when one question was put in then he will give answer then I will call upon other officer what is his experience on this issue and that is the dissemination of knowledge and sharing of know ledge. I will request please have patience you complete your presentation and lastly I will just wrap up the discussion.

So we are just done with the arm component. We have to assess the hand component. Hand has got three variables like the arm what are the things to see in the disability of the hand loss of prehension I will tell you what is prehension in the next slide Loss of sensation and loss of strength. Prehension means the ability to oppose like using the thumb thumb should be able to touch to the little finger ring finger little and the index finger each is given loss of each opposition is given a percentage of two and pinch grip you know like holding a key opening a lock cylindrical grasp 6% spherical grasp opening a bottle of water and hook grip carrying shopping bag each one is given a percentage and depending on the loss you work out the percentage so that is prehension assessment of prehension.

Second is loss of sensation thumb is most important ray of the inter hand you can probably live without index and middle finger but without thumb getting things done is very very difficult that is why it is given 9% and loss of strength unlike the arm the loss of strength in the hand is measured with a dynamometer grip strength and pinch strength is measured with a dermometer and similar to the arm component where shoulders 30% elbows 30% and wrist is 30%. In the hand each is given 30% prehension 30% sensation 30% and strength is 30%. So similar to the way we worked out loss in the arm component you again have to use the combination formula its really a wonderful formula because it is not at all complicated and it makes life so much easy once you have worked out the percentage of loss then applying the formula is very simple and there is no complication there at all. So you have assessed the disability in the arm component and you have assessed the disability in the hand component so you have got a percentage now after that there is something called we have to give additional weightage that's why I started off with dominant right hand. If its a right hand straight away give 4% this additional weightage you can add 10% a maximum of 10% regardless of even if the patient has got all the 8 in the additional weightage you cant give more than 10% but a dominant sight straight away 4% infection chronic infection will get the maximum because in orthopaedic there is infection in bone it is infection for life. You know please make a note of this because whenever somebody comes for a compensation for an infected joint or an infected bone that infection in bone is you can never very few times you can say never in medicine it never heals because bones have got millions of crevices where these bacteria harbour themselves you give anti biotic you hit it on the head it goes to sleep and when the immunity of the person is lowered infection comes again so infection in bone is infection for life. So that finishes with the assessment of the upper limb. In upper limb you have to assess only the function. In lower limb you have to assess mobility and stability.

Mobility is given 90% and stability is given 90 this 90 is a constant and that's why this combination formula is very simple and easily applicable by anybody once you have the percentage value worked out. Mobility component has got two variables range of motion and evaluation of muscle strength like the upper limb you got three joints in the lower limb hip knee and the ankle joint each is given 30% and evaluation of muscle strength using the MRC grading once again you apply the combination formula and you can arrive at the loss of disability in terms of percentage for mobility component. Then you go on to the stability component. Normal things of activity we call it ADL

Activities of Daily living like walking, climbing stairs walking out on slope standing on both legs sitting cross legged kneeling taking turns standing on the affected leg walking on plain surface each one is given 10%. So depending on the deficit disability of the person he or she is not able to do any of these if it is 4 of these 4 of 9 person is not able to do then it is 10×4 that is 40%. So you already have a percentage worked out for mobility apply the combination formula A+B whichever is higher becomes A then you have a percentage of disability for the lower limb. In the lower limb extra points to be considered as deformity deformity in a functional position 3% non functional position is 3%. I will tell you what a functional position is say for example in the ankle if there is an ankle injury and that's neutral and if the ankle is frozen or fused in about 10 degrees facing the floor that is functional position. At the same time if the ankle is fused 10 degrees facing the ceiling its the non functional position. That's what we mean by functional and non functional position. Pain mild moderate severe severe pain we mean persistent constant 24*7 not amenable to any kind of pain management that will be severe pain. Loss of sensation complete partial loss shortening first half an inch two centimeters no compensation. any thing more than that every inch every 2.5 centimeters more than that has got additional 4% increase to a maximum of 10 once again. Complications can be superficial complications deep complications. Superficial complications are infections softish infections which will heal without any problem at all but when it is deep involving the bone so even if that person does not have any deformity there is no pain no loss of sensation no shortening if there is deep bone infection I would give it a 10 because that infection is going to be constantly cooking constantly discharging for life. So you see assessment of upper limb assessment of lower limb we will move on to assessment of amputees.

In case of multiple amputees that is in one limb say the index finger is gone little finger is gone like that multiple amputees the maximum should be 100% cant go beyond that. If the stump is unfit for procedures there are some thing called an ideal stump. An ideal stump say somebody has an amputation below the level of the knee the bone length should be at least 11 cm for somebody to put a prosthesis on if the stump is only 3cm you cant put a prosthesis it not an ideal stump that is why unfit for prosthesis which means you have to revise the amputation and go above knee. If you have to go above knee then that prosthesis should have a knee joint so the complications are more. In case of more than one limb say right upper limb left lower limb below knee you can use a combination formula and add a maximum of 10% as situation would warrant. any complication in from of stiffness of the possible joints nueroma infections `once again you can consider additional weightage of 10%. Amputees assessment the commonest amputations we see in road traffic accidents are below knee above knee below elbow above elbow very very rarely a person will survive with 4 quarter amputation. 4 quarter amputation is complete loss of the entire upper limb from the chest wall. so although each has been quantified in terms of percentage the common things we see are 4 and the percentage can be easily worked out and once again once you arrive at the percentage of loss in amputees once again you apply the combination formula. For example if the maximum sum you can give is 100% once again unfit for processes is at 5% more than one limb is combination formula and add a maximum of 10 depending on whether there is pain severe pain infection nerve injuries so on and so forth. Stump complications you can have infections and

even in that bit of bone which is available in the stump say that 11 cm that wound can get infected and slowly discharge and then the bone can shrink to about 8 7 6 that will be bone loss and then that becomes unfit for any prosthesis.

Assessment of spinal disability so you have to assess the cervical spine the thoracic spine and the lumbar spine individually. So the guidelines for assessment whether its permanent or temporary because in spinal injury the catch here is what the initial presentation of trauma is not the final answer. Once there is a spinal cord injury following trauma the spine undergoes what is called acute shut down or shock and that can go on for several weeks and depending on whether the spinal injury has been intervened decompressed and fixed. By that what I mean is you can see the bone fracture there pressing on the bottom picture now if that is attended to acutely the pressure on the spinal cord if the pressure of the spinal cord is surgically relieved the cord is freed up and the intact bone top and bottom is stabilised with instrumentation that spinal cord can significantly improved that is if somebody is fortunate enough to have it. Somebody in the village is taken to in tamil Nadu we have a place called Putur native treatment that person will go from bad to worse so spinal disability is variable and the assessment really depends on the initial impact to the spinal cord and whether it has been surgically corrected and what is the final picture is what have to be taken into account before one arrives at a percentage of loss say for example in cervical spine that is the neck 25% more of the fracture of the bones the yellow string is the spinal cord the rest is the bone up to 25% fracture without any neurology no weakness patient is able to perform all functions you give a 20% but then when there is also neurology then with spinal instability the percentage increases to 25%. Severe dislocation with no residual motor or sensory is 10% with neurological involvement 15%. thoracic spine injuries are less common because cervical spine is more mobile thoracic spine is less common unless there is a real run over injury. So the neurological involvement is very high so compression less than 50% of the body fracture with no neurological manifestation or no loss of power is 10% compression more than 50% with no neurological manifestation persistent pain 20% and neurological demonstrable instability that is even after the spinal injury without any surgical intervention that part of the spine which has undergone the fracture is unstable so unstable spine gets a 30%. The lumbar spine which is the lower spine the nerve structure is there are not as dense as the thoracic so so a compression of 25% or less two adjacent vertebrae no definite pattern of neurological deficit is more than 15% compression more than 25% with disruption of the posterior element persistent pain and stiffness healed with or without fusion inability to lift more than 10 kgs 30% and then neurologically demonstrability in the lumbar spine spine gets 35%. So assessment of the spinal disability depends on whether it is cervical thoracic or lumbar or whether there is any associated neurology or not. When we say spinal cord there are two components to it the bony and the neurological component so if it is just the bony component the percentage is less and if it is just the bony component with instability percentage is more. When there is neurological involvement the percentage which means there can be paralysis which can be partial or permanent and that increases the percentage. Finally to consider before the final judgment on disability compensation as ... a judge was saying regardless of how much percentage you work out from the orthopaedic point of view one has to take into

account two things I would suggest one is infection which is said earlier infection never heals its there for life once infection in bone is infection for life and one other thing which we constantly face in the Lok Adalat in the Madras HC is young people two wheeler knocked down by a transport bus shattered hip joint he is 27 that shattered hip joint is not fixable he is 27 and he has to undergo what is called a hip replacement. Scientifically a hip replacement done in the best of hands lasts a maximum of 15 years. Hip replacement is an operation to be done in ages 60 and above imagine that done for a 28 year old the demands are high he is running jumping climbing stairs going up coming so it tends to wear out soon so this person will require a revision at least once or even twice in his lifetime. So any person with infection has to be compensated for treatment or management for rest of life when final compensation is taken into account and any young person with a joint replacement has to be taken into account that that person will require that particular joint to be revised and re revised in his lifetime at least twice taking the escalation cost as per. Thank you very much.

Thank you doctor. You have just laid emphasis on the physical disability arising out of the structure or body outside. If possible can you just give an advice to which are the text books to be followed because actually what happened in our cases our honourable judge said in my little experience doctor's opinion right report I dont know whether all the judges calls upon the doctor to examine personally to prove the opinion or not I dont know. You do regularly but then ...First of all you know under section 45 of the Evidence Act the reports of the doctor are nothing but an opinion and opinion is not binding always. It may be an advisory element and component therefore before you accept this you are to call the doctor invariably not only that in order to have a justification of the doctor of these reports what he is relying right. So you know that you must have this medical jurisprudence is there anatomy is there so many subjects are there so I would request our doctor sahab to suggest which is the text book in case of orthopaedic disability. Our officers should rely on or should read on very good text book that will affect if I miss am I right. Please give the names of the books. Question will come later on first this is my because it will help me to go to another academy to follow this I know ... I would request you to name a books so many books and other books we follow this and particularly in different fields in sexual offences we follow but here in orthopaedics in this subject you have said this is the combined disability this opinion is this because it varies from suppose at the age of 10 years someone face an accident and I have seen at the age of 5 years he has functional disability completely with the passage of time growing of the nerves he recovers mostly so this is depends upon so one cannot say in a straight jacket formula it will happen but an approximation so you just suggest book which book please

its a difficult question to answer. To my knowledge I dont think there is any text book in the market that would guide a legal personnel as to assessment of disability apart from the guidelines issued by the government of India there is no book because each one is variable what I would suggest is many a times when I was an assistant professor no professor goes to the court its always the assistant professor is sent to the court for Lok Adalat and things and it is often times it is every difficult as you said... a judge and that person as I said the last point he will require revision and a

re revision the compensation say for the insurance and the judge agrees for 8 lacs but I know he is 27 in 10 years he will need a revision which will cost him 2.5 lacs and he will need a re revision at the age of 48 which will cost him at that point of time 4.5 lacs. So no book will have that.

alright we shall see to that what code could be found out but now the thing our officers will raise some queries. Any one any officer you were just asking some question so any officer. You just give your introduction. I am B. S. Qazi from Bombay. In most of the majority of the cases this disability...but no bifurcation of the ... yes sir no certificate will have the details of how the person arrived at the percentage but if you have any doubt you can call for that person and ask to that person how its been done because I agree with you that there are several times there are boosted percentages as well you should ask and say how did it arrive on what basis and if they had applied this combination formula great. so generally they do not take the identification mark or the photograph and signature of the patient the this is ...Must be done it is mandatory you have to sign across the photo and two identification marks are mandatory.in 99% cases they are not doing it.

Now actually what happens so far disability aspect is concerned in our system nothing exact can be found it is degree of guess work has to be done. So what I understand in my little experience first of all the claimant himself is a victim examine him first understand what is his disability first before accident what was his position his status what he was doing what he was earning and after the accident occurs after the treatment is over everything now he has medi claim so you examine him first best idea as I understand. After examining his evidence then you took the doctor's opinion then you examine the doctors and have a justification. Sometimes it is exaggerated sometimes it is underestimated then you with your intellect and with study of the text on medical jurisprudence you have to come to conclusion of disability. I think this should be the best approach to assess the disability. The disability does not mean the physical disability alone mental disability. The doctor cannot assess the mental disability can I give one or two examples. In an accident newly married couple was going for a trip and they had met with an accident husband survives wife survives but wife got a very greivious injury on the abdomen I mean lower abdomen as a result it was found that the uterus had been badly damaged and uterus has to be removed right but ovaries are intact all other things intact so uterus gone away so what is the mental injury can you imagine she will not be able to conceive no child so compensation total compensation or partial compensation. Now I put a rider nowadays concept of surrogacy is there if she wants a child of her own right two things two elements I am going on a high pedestal. Nowadays there are working ladies who doesnt want to conceive at all it depends upon the mind the working ladies modern ladies who are working they dot want to conceive at all and have a surrogacy. Have I told you ovaries intact ovary was there so she cannot conceive of her own she cant be a biological mother nor can be a surrogated mother right so she can have it surrogated mother it depends upon her mind set individualistic if she supposedly says no I want to be a natural mother I want to enjoy that this is her mind set individualistic so this is a medical injury so apart from physical disability mental disability has to be worked out. for example a particular person has met with an accident and got a severe injury L4 region where the nervous system controls his urination urine bladder is controlled by the nervous

system of this because of the damage of the nerve of the L4 region so he cannot pass urine normally urine bladder cannot function so he has to be on a nappy all the time and not only that because of this nerve damage damage into the system he gradually he started losing strength of the Fitch and also ... sometimes so this is the problem because of the accident although apparently or physically he is fit he will certify as a fit but what about the urination its a social stigma it was not there before therefore what I say that before accident what was his status and what was his ability and what he was doing take evidence and not only that not only examine him because he is not supposed to tell lies actually after accident what is his problem this is the test thing first. As in the rape cases what is the best evidence the best evidence is the statement of the victim am I right you have tried to know the statement of the victim not the medical report sacrosanct. Medical report may supposing after occurrence of rape after 7 days she has been examined what will be found in the examination nothing no value. Similarly you have to examine the claimant victim and if the victim is not available then you must make an endeavour the victim is examined so physical disability mental disability both is the element. But as I said I will come next session regarding the evidentiary issues but in this case scope is not beyond reasonable doubt why not that I will explain in the next session. Beyond reasonable doubt we have adopted in criminal justice delivery system am I right so this is done. Where this is we have followed but in this case it is a semi nature proceedings the rule is yet to be formed about the procedure government has not provided the rules then what we have to follow SC judgments are there we shall discuss SC judgments preponderance of probability the standard of proof. Preponderance of probability means weight of probabilities meaning thereby taking all the evidence there are probabilities what is the probability which is much that is thee test of preponderance of probability. So in this test of preponderance of probability he says that I cannot move out normally I feel problem so in case of mental disability what is the measure to be taken as I say supposing he is a doctor and he faces a problem because of this urination and all this and leakage of urine because of this accident so he cannot perform surgery he cannot participate in surgery because this may rise give an infection so doctors ask him you dont perform surgery you go in advisory area so in case of surgeon he would have earn much more fame and money but he is loosing that. that we have to keep in mind and for the extent of damages doctors support opinion were getting material what about the mental it may so happen because of accident some portion of intestine has been damaged badly so damage portion got infected so you know the small intestine is very long you know so small intestine some portion has got damaged and then infection instant infection and then future infection keeping in view it has to be shorten implicated. So once it is shortened then it is added up then intestine is absolutely shortened. then what would happen is that your metabolic power will reduce food intake will reduce and natural... energy level will reduce. Suppose he is an agriculturist he has to work hard for continuous 8 hrs now he will not be able to do that what is the measure of compensation. As I say as a rational approach otherwise devoid on absurdity without having any element of fiction and without any element of high handedness because we must not be sympathetic towards the victim unnecessarily and we must give due sympathy and our mind has to be balanced because of the situation what the entire story has been done. Now this is supposing action is an unintentional always right unintentional always accident

presumption is no ill motive but our jurisdiction is not on accident supposing deliberately with an intention to kill him he... killed him you have got the evidence or severe injury severe damage then you are to assess compensation bone injury and all this but I think our jurisdiction is just compensation its not that element of pension and all that but our mind has to be socialistic approach holistic approach that his intention was to kill him insurance companies cover is not good enough somehow he has survived but he is totally disabled he cannot walk anymore and the person who rashly driven with an intention to kill him is awarded an exemplary compensation to see that the victim's life is secured forever and this is a socialistic approach and this is an equitable approach we are to adopt while measuring disability both mental and physical disability both. There are so many instances so there are no end of giving examples and all this I just gave one or two examples today you are very very experienced officers so you know how to deal with but society is changing too much and this is happening later on the aspect of evidentiary value vis a vis jurisdiction because when I was residing in a HC also and then I found that what fundamental mistakes I hope by this time we have learnt you will not commit any fundamental mistake none the less there is no harm to just discuss the fundamental things sometimes you loose sight out of because of emotion and all this we have to do that we shall do on the next sessions sorry we have not got to know each other in the next session we should no each other. Any questions to our expert. No question so let us disperse take a tea break and come back.

Yes mental disability aspect what you will do first in case of have you dealt with consumer protection act damage and tortuous action you have dealt with. the standard of and measure of compensation in mental would be like this. It is some sort of guess work it depends upon the status of the person of the claimant. Supposing I am a judge I have suffered mental disability and what is the mental disability when I am before accident I was invited by many a places many a seminar I need to have satisfaction reputation in case for suit for defamation standard would be ideally same procedure should be adopted as it is adopted in case of a damage in a suit for defamation what is the status I am a judge I have suffered all this because of agony that I am now confined to home I am languishing in mind no solace nothing and in that case a judge should be awarded one crore is good enough so if he gets one crore then with this money he can make some arrangement to make some pleasure trips set up any organisation NGO philanthropic he will have a mental solace you pay some money so that he can get a mental solace that you can ask him yes you have lost everything tell us how you will be happy how you will be happy now with this because no one can restore the situation position even by almighty because of the rule of nature the almighty will also not do just you are a judge ... he will say I shall be happy if this is done then if you see that is possible or not and if it is possible then do it by monetary compensation. ..

SESSION 15- EVIDENTIARY ISSUES IN MACT CASES

Hello everyone now it really overlaps the previous topics and this topic also. Now this issue is evidentiary issues it is a very wide connotation evidentiary issue; it starts with very inception before that whether the rule of evidence is applicable to this proceedings or not alright. Not strictly why do you say is there any legal provision; please is there any legal provision in the Act. Supposing in case of Arbitration and Conciliation Act there is a provision strict rule of evidence is not applicable in negative fine from this Act. What you are trying to find out the procedure right 169 perhaps you are looking to only provision relevant may be remotely 6 and 169 is there any language that rule of evidence does not apply what the SC says the strict rule of evidence is not applicable reasonable doubt J. Sinha has given the judgment I will give the citation later on. But I say rule of evidence will be applicable why the law is very clear section 1 of the Evidence Act have you got your Evidence Act with you I am reading you are the judge I am no longer a judge my role is now like a lawyer and to satisfy your mind so rather i prefer to be a lawyer to appear before you in the court I like this yes. It extends to whole of India the state of J&K and applies to all judicial proceedings in all judicial proceedings in or before any court including the Court martial martial convened under Army Act but not affidavits presented or not to proceedings before an arbitrator but not to affidavit presented to any court or officer ... no exclusion by necessary implication it applies I was saying this and what is the nature of these proceedings although nomenclature is tribunal but all the trappings of the courts are there how you can adjudge the trappings of a court the function of the court is to decide rightly or wrongly either by adversarial or consensus so these are the nature. I say though there is no pronouncement of the ... I had been able to lay my hands on it is a proceeding of the civil nature because the status of civil status is decided or civil rights is decided because of this Act but for this Act where this dispute should have been laid before the civil court initially before motor vehicles act 1939 it was before a civil court section 9 of the all dispute of civil nature civil wrong which is called tortuous action initially now after codification it is no longer a tortuous act absolutely it is called a statutory right. Therefore it is a civil proceeding essentially and this civil ... now see the section 141 of CPC. As far as the procedure is concerned section 169 says that specifically restricted power of CPC calling evidence etc so and so witness etc but I say I give you the idea section 144 141 unless there is an established procedure no procedure there is no element of transparency people will understand litigant will understand in the way it will be proceeded with. So civil procedure can now even nowadays even arbitration high stake of arbitration learned arbitrators who are no less than the judges of SC HC CJ or CJI they are adopting the CPC as an established procedure for framing issue in the arbitration act. Section 141 you can take note of 141 the procedure provided in this court in regard to suits shall be followed as far as it can be made applicable in all proceedings in a any court of civil jurisdiction I say it is though nomenclature is tribunal it is none the less it is a court it deciding some function so when it comes as civil nature proceedings the standard of proof is always preponderance of probability and as I say rule of evidence is applicable by virtue of section 1 of the Evidence Act no judgment says statute does not exclude the applicability of the evidence Act what as i say preponderance of probability right what is the preponderance of probability just few minutes back I have explained you take all the probabilities on evidence. Evidence then what

probabilities are weightier than probability has to be taken into account. Standard of proof but in case of a beyond reasonable doubt means there may not be any doubt by any reasonable rational man any doubt that is in case of criminal justice delivery system ordinarily not in case of except exception you know that prevention of corruption act is also crime but in case of prevention of corruption act a beyond reasonable doubt proof is not applicable. why not applicable in case of prosecution applies but in case of when the burden shifts upon the accused to explain if he gives explanation of his wealth his known source of income its not beyond reasonable doubt its the preponderance of probability that is the exception but in all cases beyond reasonable doubt. Beyond reasonable doubt applies in case of prosecution and not in case of defence. Supposing a plea of ... beyond reasonable doubt no preponderance of probability. For example if someone has said he was accused this person he was he said I was not there at that time in this spot I was in Mumbai this is my hotel bill this is my travel ticket this is my all so once it is produced all that court can say you can ask the hotel people whether he was booked at hotel or not to prove it but whether at the time of incident whether it was possible for him to leave that room and go away and to kill it is possible right so two possibilities are there one possible is that he was in a hotel ticket is there hotel owner has come and said on evidence yes he has been booked presumption is there he was there and it was that he has taken food this is one version. Another version is that no no I have seen him myself he came over here then you have to think how it is possible it is possible; he has booked himself checked in and key of the room was taken and he retained the key with him and he might have deposited the key to the counter immediately had gone took a flight ticket was before hand booked came back to Calcutta and committed the crimes then ticket was booked came back at night. This possibility is there. So what possibility is the weightier or believable this is the standard of preponderance of probability and this belief of a judge must be a rational one. Supposing there is no evidence to show that you left hotel in Bombay and the he has taken a flight no material is produced naturally you are tend to believe this theory preponderance of probability so standard of preponderance of probability is the accepted formula in case of a civil proceeding to prove the claim. Now first evidentiary value starts from beginning what is the beginning application has been made that yes this is my compensation this is my damage this I have lost rash driving and all this and respondent's car was involved right he has stated it so you have issued notice you started trial plea has been taken at the time of the accident my vehicle was not a motor vehicle at that time I was riding a horse driven cart the plea has been taken right so it was not a vehicle it was incorrectly and falsely stated it is a motor vehicle no let them prove that I am the owner of the motor vehicle in the registration ;let them give registration number call the motor vehicles authority then what will you do is it not the jurisdiction of the issue but the jurisdictional issue is depending upon a proof evidence what is the evidence you may require in this case first you have to examine the respondent right respondent you have to examine who has taken the plea it is his onus this is his special knowledge 106 of the evidence Act so you take the evidence of respondent yes how many horses you have engaged you have to ask him what is the colour of the horses so how old the car what did you do there after have you driven by yourself call his fellow call him; then he discharges his onus now burden shifts upon the claimant to say that it was a motor

vehicle within the definition of the motor vehicles Act so he has to say then you have to call for evidence you say give the registration number of his vehicle in the pleading there is none if he finds in the pleading some registration he has denied then what you have to do is to call the motor registration authority whether it is correct or not if it is correct then whose name is the registration so it reaches the issue so these are the evidence. So evidentiary issue starts from the beginning with regard to the jurisdiction now once it is over you are to dismiss the claim altogether. But supposing if you dismiss a claim but there is a loss of life actually he was a scooter's pillion rider died because of this horse driven horse became erratic so he ran hammock and killed him on the road road accident so what you will do the you cannot avoid because you have the jurisdiction then what would be your duty as a judge so to say proactive or dynamic judge you can do the best but you can pass an order that I have no jurisdiction to do this he has filed this matter wrongly before me I lack jurisdiction you can turn away the pleading if the pleading is so to say some sort of order return the pleading and once the return a pleading order several ... you have to mention which judge. Once you pass an order then it will be sent from your registry to that registry and they will require the stamp paper and all that it will then be an action of civil claim so what you are doing best for... after 5 years right after 5 years it has come by that time may be a debarred claim but for section 14 of the Limitation Act which excludes the period of limitation but there may be a doubt and in order to remove the doubt you can pass this order it was pending before me and only could be decided when you have got the evidence at the trial on the preliminary issue so this is the evidentiary part. Now apart from this next you are to see the identity of the claimant. SC of course has said that even ... but thus machinery of law does not envisage only machinery of the law says no strict rule or pleading is necessary a person affected may come or in case of death legal representative come or claimant's agent may come. This claimant's agent means million dollar of doubt so when you find that the claimant has been aide first enquiry would be to see that who is the applicant in reality. Applicant in reality if the claimant himself is not then what is the nexus and relationship and in our case in my little experience what happens some professional agents are there and they are negated by some unscrupulous lawyer so you must see that the unscrupulous lawyer may not have any nexus with the cases and the real claimant is thereby denied their legitimate right and they feel that justice has not been done to him or her your duty would be to see that you must ascertain that genuine claimant is there on receiving an evidence or document when you find that the genuine documents are not missing only name has been given but nowadays to get a proof is not a very difficult task you can ask the claimant produce your election identity card but now adhar card has been done some sort of document which has been missing. I think you must not forget nowadays to avoid that fraud once it is done then the question comes to trial. At the time of trial and what are the things it becomes what are the elements. First element is there must be element of rash and negligent element rashness and negligence. Rashness and negligence may arise from various factors what are the factors I say lack of taking reasonable care no reasonable care is taken either by claimant or by the respondent there must be some evidence that reasonable care has been taken and next breach of traffic rules these are may be causes breach of traffic rules there may be a culpable negligence negligent act resulting in mental shock carriers of

passengers contributory negligence composite negligence vicarious liabilities. these are the factor to be borne in mind while receiving evidence. Reasonable care means you are to examine the evidence of the claimant first because his first onus is to prove negligence on the part of the respondent. you are to take oral evidence of the count whether he himself was involved in the accident obviously you can see and he says I have suffered damages and so I have injury. You must see by yourself the nature of injury on his body dont hesitate to do that. Supposing if you said he was operated ... then yes can you demonstrate which portion was operated upon then you have to apart from recording evidence you take note of this he was operated upon he proves that. First proof element what we have to accept that yes what are the questions supposing the lawyer is not very effective you have to take the role of a because you have to award a just information you must have a proof with impartial approach. First you say yes what is the date you ask what is the time you ask yes you say that what is the vehicle of the nature scooter or truck and etc what is the number yes you take the number say have you got the proof of registration yes. Now he has mentioned in the pleading this number of vehicle so and so and moreover you must have a report from the officer in charge of police station report concern you get a report you corroborate with this right you corroborate and then you find the respondent pleading. With the respondent pleadings whether motor ownership of the motor vehicle has been denied or not. First thing is this this is the assertion in the pleading if it is based on petition and read the counter whether factum of involvement factum of motor vehicle being denied or not. If the factum of motor vehicle is not denied then you have your jurisdiction and in that case you do not require him to prove that he was a motor vehicle or nature of the vehicle you need not prove admission is the best proof that portion is eliminated what you are to prove that you are framed issues and issues are framed based on the reading pleading which portion is denied and issues framed and once it is done then you are to quote questions time and etc how it happened etc. Now if it is found upon the evidence evidence found on evidence that he has saved the accident victim or eyewitness have saved the accident right then how the accident took place is not known to them. The what would be your approach then in that case if the factum of accident is admitted or proved but the cause of accident is not known the you have to apply the principle of res ipsa loquitur or rather the concept of special knowledge as required under section 6 of the evidence Act a person special knowledge having knowledge the respondent is the owner of the vehicle who was driving the vehicle he is to be summoned and to explain how this has happened mind that burden shifts but if the cause or reason of the accident is known to the claimant concerned then the claimant has to say this with action. There are so many instances supposing he is driving a vehicle he is a passenger or I am coming from outside he was in a left side I was in a left side and somehow thereafter he took a swap and wrong direction opposite side collision. Thereafter unconsciousness of the victim he has narrated the story thereafter what happened then naturally then other side respondent has to say why if he cannot explain properly then he is responsible for negligence fails to discharge Indian standard would be preponderance of probability supposing he can explain that no all of a sudden the brakes gave away the steering couldn't function properly this explanation has been given do you stop there you will not stop there this is not the adequate explanation adequate evidence is not there

then what you will do I can understand very well that the brake may give away mechanical problem can occur anytime no body can predict concept is that whether you have taken a reasonable care or not then you are to put questions. Before you started a journey with your vehicle did you check up your brake oil and everything if the answer is no then negligent or if he says I have checked up then after the next question you are to put or you must get evidence yes how long before you sent your car for routine maintenance to your garage. If he says that just few days back normally when you undertake a long journey on the road as a reasonable prudent man we take our car to our garage people right and we get thoroughly checked up because I am undertaking a long drive. So this is what is called reasonable care as an owner of the vehicle once this evidence is available he has taken reasonable care and everything then naturally he is not negligent unless he is negligent. Negligent and rashness is there can you award compensation therefore this is the evidentiary issues in case of this. Next question comes you have to fix the liability and responsibility. Supposing in a hire purchase car there are all the cars motor vehicles now a days what is called volvo bus all this volvo bus is very luxurious bus like a very good first class train compartment like facility and some volvo bus are fitted with bio toilet remember when I was in Hyderabad CJ I was just taking up and there was an accident took fire on the road as a volvo bus so ... but those vehicles are normally not purchased outright by any transport owner some financier is there I am just giving you an example how you do that you decide the issue hire purchase agreement was there in registration hire purchase financing and now accident took place and he says that I am not responsible the driver no doubt the driver is negligent rashness driver can be held responsible. but driver in his evidence has said because all the brakes have gone away I requested my owner to have a maintenance properly he failed to do so. Normally the several liability vicarious liability in case of a civil wrong applies whether the driver is responsible or not that hardly matters. Re ipsa loquitur that itself constitutes negligence so he has explained that yes my owner is negligence. Now in that case what you are to say you are to hear the owner he mentions the name of the owner he says that yes I was a owner and I was an employer. On the date of incidence I was not the owner why the hire purchase agreement I was the hirer and financier terminated the hire purchase agreement and he seized the vehicle in coalition with the driver and the driver was constructively employed by the financier and financier started running he took that plea then what you will do first thing you will do that document whether there is an hire purchase agreement is there or not hire purchase agreement provides a clause for termination of hire purchase or not if provides then you have to give notice to the owner then you ask the owner I mean financier may be bank or may be the recovery agent of the bank both are possible you call them after calling them take evidence whether it is terminated or not it is terminated you took position yes or he may deny both if he denies then burden shifts upon the hirer burden shifts upon hire he has terminated then he says you are to ask termination how what all you have in writing give the letter of termination if he fails to do that financier has to be believed and hirer has to be disbelieved to fix the vicarious liability. then next question come up maintenance if he says no I have taken all measures then you produce your log book and if you have sent your vehicle to which garage call the garage people whether it is done or not can get evidence so just see to fixing up the liability how you are to call an evidence

and in which manner. This is the vicarious liability and if it is found that the driver is also negligent if the driver is solely negligent and owner is not you cannot hold the driver completely responsible and practically and rationally do not do it because the driver is a poor fellow he cannot afford any compensation but whereas the owner can afford compensation so he affords it. If the element of negligence is solely on the driver and there is no element negligence on part of the owner are there then what you will do if you find that the driver may be possible for the driver to recover then apportion accordingly 50% 50% if you found that its not possible to recover from the driver you apportion 30% 70% 70% to the owner applying the vicarious liability principle. So therefore you have to collect the evidence to have this and supposing if there is a accident occur because of the breach of traffic rules traffic rules breach of traffic rules what happened a pedestrian he was walking on the wrong side for pedestrian who was crossing he was not careful enough that there is a red signal for the walkers and the green signal for the vehicles then this accident the victim approaches if it is established that the victim himself so to say breach the traffic rules and breaching the traffic rules is one of the element of negligence so this element of negligence overlap the concept of contributory negligence. So contributory negligence if he found a contributory negligence then will you deny the compensation altogether no it may be the mitigating factor. It may be at the best mitigating factor and what principle of law you will do that are you aware of the law when you say no tell me that mitigating factor ... yes please what law law of tort yes any one else Law of tort is used in the common sense tell me yes please... as a common sense you say as a function able justice because justice demanded sympathy but when you say tort tort means the wrongdoer must be this is the element. But the vehicle has not done any wrong the wrong has been done by the victim but the law our we have said there is a not altogether denial to that we find a very old law this is called Law reform Contributory Act 1945. I am reading section 1 of the Act where any person suffers damage as the result of the partly of his own fault and partly of the fault of any other person or persons a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering that damage but the damage is recoverable in respect thereof in respect of such extent as the court thinks just and equitable this is the element just and equitable having regard to the claimant sharing the responsibility for the damages provided that this subsection shall not operate to defeat any defence arising under a contract. If there is a contract meaning contracting out the liability where any contract or enactment providing for the limitation of liability you know that there is an enactment of limitation of liability in Carriers Act unless the notice is given Carriers Act under one years perhaps limitation statutory limitation not the 63 general limitation but the damage is recoverable by any person by the virtue of the forgoing subject to such reduction as is therein mentioned in the court shall find and record the total damages which would have been recoverable if the claimant had not been in fault wherein in any case the subsection applies therefore the rest of the portion is not important kindly take note of this and following this enactment in Calcutta HC 87 Calcutta HC division bench has applied this law this law and I can give you the reference. The contributory approach was made altogether denied so contributory negligence is not altogether denied basing on this enactment and in order to have the proof of contributory negligence then what would be the approach of the court or tribunal. First

the plea of contributory negligence is taken by whom first it is to be taken by the respondent therefore onus shall burden on his part to prove that. What is the proof that you require: he has taken reasonable care or not if he says that I have taken all reasonable care nothing has been done wrong on my part so therefore what they say is not correct was a wrong ... it is very easy to say anyone can say is it a clinching issue to discharge the onus right so you are to verify. Supposing cross examiner is not very effective under 165 of the Evidence Act a magistrate or judge can put any question to honour the truth so you can take the role of the cross examiner. You are to ask him yes what was the time when the accident took place at what time did it exactly happen and apart from yourself who were present that you have taken apart from your oral statement is there anything else to show that you have taken the proper step is anybody was accompanying you if it is in a day light he says that I was coming by the left side I was taking the right step very good left side was there any habitation on the left side in the pavement or is it just kaccha road left side because if it is an highway normally there may not be any pavement if it is a municipal road there must be pavement whether pavement is metal pavement and whether any shopkeepers was there when the accident took place what were you doing have you noticed once you put all these questions then he will not be prepared for these questions to answer because there is a limit to fabricate the story and the fabrication will be stopped at a certain point of time the moment you put series of volumes of questions then immediately see their reaction if he is a seasoned liar he will not be sweating so easily if he is not a seasoned liar if he is a first time liar in the court you just see the reaction he will start sweating. In my career when I was a lawyer I remember while cross examining one senior was cross examining just before recess the witness and he was out and out telling lies then he was sweating and after the recess was over when he was called for further cross examination it was informed he had a heart attack and he was taken to hospital and he passed away. This was the impact of the cross examination because he was not a seasoned lawyer he was a first time liar. I remember while doing one time while doing one case of forgery of will the question was whether the handwriting expert was bribed to give opinion on this issue that was not the issue when question was raised he was not a first time liar so while giving answers to the questions he started sweating then immediately fell down in the witness box doctors came and gave him medicine and after sometime then he realized the he admit yes I have done a wrong thing my lord. So if you put cross examination properly you can... so contributory negligence to be certain you have to examine the person who has taken the plea first and once his onus is discharged then burden shifts upon them on the other side. The person who fail to discharge the onus under 102 of the Evidence Act if no evidence is laid then he will face then he will shoulder responsibility that's vicarious. Apart from the vicarious liability you see the another thing is this how far sovereign immunity is applicable in case of government vehicle any vicarious liability. Supposing a transport corporation totally owned by the government yes who is liable government in all cases I am giving you an example just tell us. Normally vicarious liability is also applicable in case of sovereign government also normally with a rider if it happens in course of employment discharge of employment therefore what is the evidence you require to receive. Supposing a government vehicle has been he is to this driver is to just carry the officers and staff right in that case if he

meets an accident and the compensation and damages for negligence has to be borne by the government and transport corporation no escape then But after enlightening after this unloading all this officers and staff of this establishment he was coming back while coming back he picked up a few passengers for his own gain it is possible right it is possible so in that case one passenger was carrying he accidentally fell down from this vehicle succumbed injury fatal injury he made a compensational claim. It is arising out of the motor vehicles so if the claimant comes and the driver has taken a plea that yes I am the employee I am not responsible my owner will be responsible. what will you do yes please....I mean to say ultimate liability. You may award like this but that is a question of recovery portion but you are to fix up the liability first no you cannot do this first of all you can award this component like this because this component is like this because the driver alone cannot with his monthly income he will not be able to pay at a time. First of all he has committed penal offence right he cannot be allowed to take advantage of his own wrong he is not supposed to illegally carry passengers its not a public carrier he supposed picked up passengers earned money so he appropriated the money. This is again an offence under IPC so to say criminal breach of trust so he has committed an offence. So what you are doing you are making responsible for the government for committing an offence and to pay compensation. Here not in case... while returning he is supposed to come empty had he not picked up the passenger the accident would not have taken place and that would not have given rise to pay any compensation. Yes yes yes...In case of criminal liability...Provided with a rider in course of employment in discharge of his bona fide duty only then government vicarious liability because he is not supposed to pick up the passengers but you can say so you are to put the liability on the driver primarily but since the driver is unable to pay I award this money should be paid by the government and shall be recovered from his salary every month with a interest on the reducing balance. First insurance company will have to pay there is a rashness there is negligence but he has taken a plea I am not responsible proof of rashness negligence element of rashness negligence has to be found first. Without this element you cannot award any damages without this element you cannot award any compensation like a civil court or like writ court for ... Here you must your hands and jurisdiction are circumscribed by the element of rashness and negligence and this factum will be negligence because he has not give nay warning he has not dismounted from the car or not properly and this is notice by the conductor no conductor engaged for taking up the car and secondly it is not a carrier within the meaning of the carriers act had it been a carrier he would have some sort of immunity its not a carriers act and this is relevant. Now I will tell you one thing very important emerging issues I will tell you particularly in West Bengal in other areas what happens battery operated some tricycles are there right tricycles are there I was discussing with Shruti yesterday and what happens this tricycle operated is a very fragile body very thin body you must be knowing that first time I saw in Gujarat Ahmedabad long time back motor bike abundant motor bike engines are fitted then it is operated so very cheap transportation. So what happened it is 1 lac cost batteries this is invertors batteries are fitted in batteries cost 40000 and this all cost 1 lacs. its 1 lac investment the longevity of this sort of vehicle may be 2 years so in 2 years this vehicles have carried passengers 8-9 passengers I can understand municipal inside road its alright but having a maximum speed of 20 kms/ hour no gear either back

gear or front gear nothing only brake and brake shoes are not very effective and moreover it is not registered. Supposing if an accident took place and compensation is claimed will you entertain the application I am giving you the description take the motor vehicles Act. ...its not a motor vehicle e rickshaws and some definition whether within definition of motor vehicle or not find out. I was checking up very hazy just I am reading for your benefit also. Motor vehicles just check up whether motor vehicles or not yes 228 I am reading 228- motor vehicle or vehicles means it doesnt our jurisdiction arising out of a motor vehicle not vehicle it is a vehicle motor vehicle or vehicle means any mechanically propelled or vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from external or internal may be trailer external internal source and includes a sachet to which a body has not been attached but does not include a vehicle running upon a fixed rail in tramp car is not motor vehicle metro rail is not motor vehicle it is applied metro railway act railway act is different metro railway act different because it is a metropolitan transport system different from connotation. Which one no it does not come within the definition of motor vehicle you have jurisdiction it is a rail tribunal claim metro rail tribunal claim it is not within railways act so many things because when I was deciding in a jurisdiction power in Hyderabad metro act tramways act different things...so fixed rails or a vehicle of special type adopted for use only in factory or any other enclosed premises or any vehicle having less than 4 wheels three wheeler fitted with engine capacity of 25cc so it does not come under the definition of this. But nowadays what is happening some governments are planning to register as a motor vehicle and those vehicles are not having any insurance in contravention of the motor vehicles act also and rules. Supposing today vehicles on the high way and because of this negligence whatever may be one of the passengers died on spot will he get the benefit of rash and negligent driving of that section 304A no. This will be culpable homicide not amounting to murder. its a culpable negligence because he is not supposed to bring vehicles on the road without registration number 1. Number 2 it is not a motor vehicle number 3 without having a permit you cannot carry passengers if you have a permit then you are a public carrier either contract carriage or stage carriage or may be carrier for goods goods act. Therefore why this enactment it gives an immunity against any crimes ... as we enjoy immunity what immunity do you know you are giving this sentence yes please yes you are abusing any person or you are a liar you are a liar you are telling the witness you are a liar you are writing you are doing does it not amount to defamation it is but why the Judges Protection Act 1985 in addition in criminal justice delivery system in addition there is an immunity if you discharge duty in bona fide but today supposing I am in a court a lawyer is arguing and his client is poking and then I became furious as a judge in court I just threw my paper to the targeting judge and he got a grievous injury and fell down can I get immunity anything done can I get in the course of duty why not in course of discharge of my bona fide duty it is not a bona fide my discharge its not part of my duty to assault somebody else. Supposing I am abusing a lawyer uses filthy argument in an open court in some portion dont mind saying so its not a court some area of our country this haramzade saale is openly said no one minds but you dont mind in some part of India it is taken as an offence serious offence but in some cases saale haarmzade and other languages are there which are very abusive but they dont mind and this is a mind set abusive language is a

mind set so if it is done I am not supposed to abuse with a filthy language by a lawyer in the court although discharge of my duty so there is the immunity Judges Protection Act 185 is there in addition IPC long time back 1860 protection has been given hangman and the judge is not to be prosecuted. But just I am asking for diverging from the point supposing one judge I just assaulted grievously it is a grievous hurt which calls for immediate arrest can I be arrested then and there why not ...without the permission of whom its not the CJ first of all you are the judiciary you are the judge you are a judge of the government first thing is decision has to be taken by the full court HC first a CJ is not a HC CJ is the first among the HC of course in administrative side CJ is the last word but subordinate judiciary the HC an action has to be taken by the government I mean Governor but on the advice of the HC so once... has to be done then FIR first has to be launched if once launched into FIR inspector will approach the government kindly take liberty of the HC then government speaks immediately notice come the full court or end court committee takes a decision giving permission to arrest. So we enjoy because we may not be subjected to public harassment and public glaze so naturally these are the elements so in that case we are to receive the motor vehicles act as I say tricycle it is an accident on road therefore we have to see the nature of the vehicle evidence you are to receive there are so many interesting things within a short time it cannot be explained each and everything. Can I continue or should I put an end here it is upto you if you feel hungry you can disperse for sometime should I continue yes alright. So arising out of motor vehicles or other aspects I can do also you want to put question... Now you say that there is distinction between court and tribunal you mean to say that. First thing it has to be see the nature of functions discharged by the body or panel for example Lok Adalat right can you say the function of a Lok Adalat is a court no why it is a public hearing everybody is hearing. what are the trappings of a court Court access to each and every member of public as a matter of right to watch the proceedings and to see and the entire of function for the duty discharged by the body of it decides of the power is given to decide some right and liabilities of the parties this power of adjudication irrespective of the nomenclature pretext the character and role of a court. Here in a motor accident claim.. what has been substituted for one purpose it has been specialised for example I will tell our income tax Act came into force in our country do you know when income tax act do you know when penal code Indian Penal Code 1860 and Government of India Act 1858 by this Act entire India became subjected to the rule of British Parliament and before that East India Company with some regulations 1858 is the starting point of the rule of law so to say in our country Government of India 1858 then after government of India took over then first reform was made in the criminal area Indian penal code 1860 and then fiscal area income tax act 1860 right At that time thereafter this act was replaced income tax 1913 then 1961. Order of assessment in the income tax cannot be challenged before the court of law civil court has no jurisdiction so special tribunal and all this none the less their function is of a civil character deciding some liability and at some stage in some Act it provides for some adversarial proceeding in some stage no. If it is adversarial in character proceedings of adversarial in character and power of deciding right and wrong and fixing rights and liabilities these elements are there and then the public has a right to have an audience or access to hearing then it is a role of a court irrespective of the nomenclature

of this. Now initially as I said before motor vehicle 1939 when tribunal was not there it was before the civil court. So you are discharging the civil court but nomenclature is tribunal it depends upon for example this service dispute service disputes nowadays tribunals service tribunal state administrative tribunal all this but because of the change of nomenclature enactment that doesn't mean that the role of the court... Am I clear to you sir So this is the basic jurisprudence because today I cannot give you all these otherwise what I say take it I have some foundation in law.....Now listen to me why tribunal nomenclature I will tell you this is a specialised forum first ranking for special purpose for example before the family court 1986 family court because of the special tribunal for special attention separate forum has been family court and I will give you example one thing because Lok Adalat cannot be a court because ordinarily Lok Adalat has a jurisdiction to decide right and wrong to bring about compromise conciliation no mediation I should say is an absolutely misplaced idea mediation law particularly Delhi they are fond of mediation but I tell you the litigation matter in mediation if the party does not accept the agreement it can't be enforced. There is no enactment centre no one has challenged I just caught up the issue at national international level and ...in case of pre litigation matter unless both parties accept immediately it cannot be executed it is an enforceable agreement at the first then he has to file as suit again. But in case of conciliation the agreement of conciliation will have an effect of enforceable decree award in case of Lok Adalat enforceable decree award in case of regular arbitration award enforceable in case of conciliation effect is that section 30 of the Arbitration and Conciliation Act consent award consent why is the distinction mediation conciliation what are the cases should be placed in conciliation mediation or arbitration but in case of pending litigation section 89 of CPC if the matter is referred to a mediator under section 89 CPC pending matter then once the mediation is resulted in an agreement there are mediation rules framed by the HC it partakes the character of a decree and in that case it is executable but in other cases per litigation if it is not accepted by any reconsiderate party thenno no no I suggested please amend please add section in the arbitration mediation chapter in mediation and arbitration Act I have suggested but they have not amended some other portion of Arbitration and conciliation Act but what I was telling that Lok Adalat is not a court so to say but I say Lok Adalat will be a court do you know when if it is a function of a permanent Lok Adalat do you know that... If I remember section 23 E perhaps I may be wrong section 23 E subsection 8 supposing no compromise is arrived at the Lok Adalat has a power to decide the dispute then permanent Lok Adalat. Permanent Lok Adalat cannot decide all disputes it is limited service transport essential. So many classified areas not all areas but permanent Lok Adalat has an expansive jurisdiction unlike regular Lok Adalat. Supposing the parties are not willing to settle or bring about a settlement then it has a power then it has a power to decide the dispute section 23 E subsection 8 perhaps. Permanent Lok Adalat there is some a b c d some section is there 20 or 19... legal services authority act okay. Yes 22 A not 23. Yes this is 22 C subsection 8 I am reading only that portion because you are all judges I am a lawyer section 22 C subsection 8 it says that where the parties fail to reach an agreement under subsection 7 the permanent Lok Adalat shall if the dispute does not relate to an offence decide the dispute... subsection 7 contemplates a consent element but subsection 8 says if the parties fail to reach an agreement under subsection 7 the

permanent Lok Adalat shall if the dispute does not relate to an offence offence may be compoundable offence non compoundable offence... you say that a person is not constitute under offence yes the dispute does not beside the decide the dispute. Decide means receiving evidence giving a hearing its like a arbitration adjudication decision making power has been made. Decision making power means so once this function is adopted by the permanent Lok Adalat then it becomes a court nomenclature is different but the principle is this then what is the substance of the power given what are the duties given under the act if the power is given to decide right and wrong and to decide and declare the civil rights and liabilities then it is in nature of the court nomenclature may be...So it is in fact in Calcutta when I was an executive chair person of legal services authority I praised this section in a railway station transport so the a complaint was that in spite having valid ticket he was not given a berth then my a call was given in my office so immediately my van rushed there permanent Lok Adalat it was in the evening so when we got there I was present two supervise my sitting additional judge I appointed Lok adalat judicial member and senior lawyers senior lawyer means senior barrister very eminent barrister I inspired him come we have a very noble idea it was shatabdi or rajdhani something a luxury train so he was not allowed to board the conductor has allowed some other passenger to ride then railway was not prepared to just settle the matter then we asked for decide the matter call for the evidence see your ticket you call your reservation chart yes this is the passenger let me see his identity and who is occupying now just made short enquiry how did you let us see your ticket then no ticket then how did you sat this thereafter we asked them ticket then then and there we decide the matter holding this fellow attempted to travel without ticket he should be booked under section 18 of Indian railway act and you should be fined and this conductor has aided and abated he should be fined also and a copy of this award is communicated to general manager for taking action against the railway and with an advice to take decision immediately within 48 hours you are suspended and then mental agony he suffered for all this and he was waiting with agony so special damage was award general damage was award and 2000 rs compensation was award for damages and with a direction to write and to also gave police escort who is this fellow who is on duty he may not just drive out from the compartment in the mid railway station all the time he will be escorted by the police this award was passed this was done adjudication. So you know the law you are having the law you have your power for the welfare of the people this is what is called rule of law this is what is called dhramosnathaoan. Let us not preach and let us not go by the slogan the time has come the duty which has been given to us nt go by the slogan and at the end of the day I just advice you dont entertain ambition man burning ambition dont go and fall in ratless I want to become a Sc judge I want to become a CJ I want to become a judge of HC then you are committing a crime and scene to the almighty the power has been given to even junior decision civil law we are the constitutional authority but the DM SP they are not the constitutional authority am I right or wrong your appointment is emanating from constitution article 233 234 234A subject to guidance by HC article 235 but do you find any mention of the appointment the appointment of DM or IAS officer no they are the bureaucrat or civil servant and your role is of a cabinet member of cabinet this has been recognized on SC judges Associations so this is your power and duty let us not go by slogan we

have to share our knowledge no one can claim as a master you are the master of your own consent therefore our strength of the judiciary is rested with our district judges and subordinate judiciary. they are our so to say skeleton and the SC are the hearts lungs and brain you have given skeleton and the anatomy is strong inside limbs cannot become stronger therefore you are the propelling force you have to read the law... on the behalf of NJA I would like to thank sir thank you so much for taking out time and coming here and thank you to all for your patient listening and I hope there is some food for thought that we are sending you back with to apply in your work so that we can make a change for the country. Thank you so much. I will be just giving out an eval form if you can just take 5 minutes to just fill it up thank you. before you part with you just write a judgement of the SC on government vicarious liability i have not seen the judgment I have forgotten AIR 1995 SC 2499 I have checked up after that there is no judgment of SC you will get the principle from her parties name just I will give you the parties name I am just also checking up you just check I have hurriedly State of Maharashtra v. Kanchanmala Vijay Singh Motor Vehicles Act 110 old Act J NP Singh's judgment...Yes I will give you Calcutta judgement also it is AIR 1980 Cal 165 I will give you the party's name also Rural transport service v Bezlum Bibi. I am reading paragraph 15 this the reason why courts in India have applied contributory negligence act in holding that contributory negligence will only mitigate the liability mitigating factor negligence that can be attributed but could not debar the claim altogether reference may be made to state v. Lal mohan badriprasad then ... and there is a Delhi HC 1972 accident claim cases 483 Delhi has been relied on and Punjab state v. jaswant ...He was one of the finest judge in Calcutta HC very precise and decisive. have you taken note of this and this act together what I expect is you read this judgment yes yes ...I have checked up our parliament has not repealed as yet by virtue of this law this law still holds good. So you are thinking on what basis apportionment ...okay all the best Thank you for listening me patiently...Shruti can I ask you one thing with my curiosity the disproportionate punishment concept and below 14 years death sentence shall not be given and below 7 years no trial can take place in the IPC it is there right Do you know where from they get this idea of jurisprudence it is our Indian origin or origin from somewhere else concept of disproportionate punishment and the concept of trial of a child below 7 yrs debaring any trial and given any punishment beyond 14 years...