

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.470 of 2018

Manikandan,
No.150/3, Karumariamman Koil Street,
Nedungkundram,
Chennai 600 072. ... Appellant

Vs

1.P.Palani,
Kalanpanpuram Village and Post,
Maduranthagam Taluk,
Kanchipuram, Tamil Nadu 603 303.

(R1 - Already set exparte in lower Court)
(R1 - Notice may be dispense with)

2.Royal Sundaram Allianz Ins. Co. Ltd.,
Sundaram Towers, No.45 & 46,
Whites Road, Chennai 600 014.

3. Union of India,
Rep. by its Secretary,
Ministry of Roads and Surface Transport,
New Delhi.

4. Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi.

5. State of Tamil Nadu,
Rep. by its Secretary,
Health Department,
St. George Fort,
Chennai.

6. State of Tamil Nadu,
Rep. by its Secretary,
Revenue and Commercial Taxes Department,
St. George Fort, Chennai.

7. Director General of Police,
Mylapore, Chennai. ... Respondents

(R3 to R7 suo motu impleaded vide order dated 12.03.2020 made in CMA.No.470 of 2018)

PRAYER: Civil Miscellaneous Appeal filed against the Decree and Award dated 23.11.2017 in MCOP.No.2629 of 2013, on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant :Ms.Y.Jayanthi Basker
for Mr.J.Mahalingam

For Respondents :Mr.S.Manohar (for R2)
R1 - Exparte

J U D G M E N T

(Judgment of the Court was delivered by **N.KIRUBAKARAN, J**)

"LIQUOR CAUSES MORE EVILS

IT MAKES MANY AS DEVILS"

Easy accessibility and availability of alcohol made by Governments is the main reason for increase in crimes in the society. Many precious lives are lost and many people are injured and crippled due to drunken driving. Heinous crimes are committed under intoxication. Health of citizens who are consuming liquor is gradually affected violating fundamental right guaranteed under Article 21 of the Constitution of India making it as a dangerous social problem. Women and children are worst sufferers due to alcohol as men become drunkards and they usually beat them after intoxication.

2. About 70 lakh people out of 68 million population of Tamil Nadu consume alcohol every day. 6500 TASMALC shops cater to the needs of the consumers earning 35% of State's income. Mostly the consumers are invariably labourers, farmers, lower middle and lower strata people. Most of the daily wagers are stated to be spending 50% or more of their earnings on "QUARTER (180 ml.)" of liquor driving their families to abject poverty. Women and children need

to be protected from domestic violence, sex crimes, poverty, etc. Innumerable families are being shattered because of drinking and drunken driving. Health, wealth and peace are lost due to alcohol and mostly, the sufferers are women and children as they are affected physically, psychologically and economically. More people including juveniles are becoming addicts.

3.1. Drinking causes many health hazards apart from causing numerous road accidents and many heinous crimes. Researchers have linked alcohol consumption to more than 60 diseases. **"ALCOHOL DOES ALL KINDS OF THINGS IN THE BODY, AND WE ARE NOT FULLY AWARE OF ALL ITS EFFECTS. IT IS A PRETTY COMPLICATE LITTLE MOLECULE."** says James C. Garbutt, M.D., Professor of Psychiatry at the University of North Carolina at Chapel Hill School of Medicine and a researcher at the University's Bowles Center for Alcohol studies. Doctors say that alcohol consumption causes 60 diseases and **major among them are cardio vascular disease, cancer, anemia, liver cirrhosis, dementia, depression, seizures, gout, high blood pressure, infectious disease, nerve damage, pancreatitis, etc.** Hence, people should be discouraged to take alcohol. Many States like, Bihar, Nagaland, apart from dry States like Gujarat banned alcohol completely or partially. Mr. Nitish Kumar, Chief Minister of Bihar claimed huge drop in domestic violence and rape cases, since alcohol ban was introduced in April 2015 (between April 2015 and April 2016).

3.2. Tamil Nadu stands first in the number of road accidents having 63,920 accidents accounting for 13.7% share in the total accidents that occurred in

India, during 2018. In terms of accident deaths, the casualties are 22,256 persons in Uttarpradesh, 13,261 persons in Maharashtra and 12,216 persons in Tamil Nadu.

4.Though it is written on the liquor bottles that “**Drinking is injurious to health**”, still the Government is selling or supplying liquor to the citizens, affecting their fundamental right under Article 21, contrary to Article 41 of the Constitution of India which deals about total prohibition to be brought in.

5.Here is a case wherein drunken driving has crippled the victim as a vegetable.

6.The appeal has been preferred by the claimant aggrieved with the quantum of compensation of Rs.4,37,920/- towards disability sustained by him due to the injuries caused to him in the accident which occurred on 01.02.2013, when he was driving on GST Road from North to South in his car and stopped to take a turn towards west to go to Gandhi Road after giving proper signal and while entering Gandhi Road a lorry belonging to the 1st respondent, insured with the 2nd respondent driven by its driver rashly and negligently, hit against the car resulting in the victim sustaining grievous injuries. Therefore, claim petition.

7.The claim petition was contested by the second respondent/Insurance Company and the Tribunal on appreciation of evidence found that the accident occurred because of the rash and negligent driving of the lorry insured with the 2nd respondent and determined the disability at 33%. It applied multiplier method by taking Rs.6,000/- as monthly income and “17”

as multiplier and along with other heads, awarded a sum of Rs.4,37,920/- as compensation. Questioning the adequacy of the compensation only, the claimant is before this Court.

8.The learned counsel for the appellant would submit that the appellant sustained serious injuries and it was proved before the tribunal that he has become a vegetable and he is unable to do any work and he has become mentally retarded due to brain injury. Therefore, 100% disability should have been determined by the Tribunal, so also loss of 100% earning power. Moreover, she would submit that amounts awarded under other heads are all very low. However, Mr.S.Manohar, learned counsel appearing for the Insurance Company would submit that the appellant was in a fit condition, when he was examined before the trial Court and therefore, the Tribunal rightly determined disability at 33% which needs no interference.

Disability:

9.A close perusal of the pleadings and evidence would reveal that the claimant sustained the following injuries:

“1.Fracture of left Temporal bone.

2.Loss of left eye.

3.Paralysis of right side body.

4.Left fronto temporal acute SDH

5.Left fronto temporal parietal decompression cranios with sub dural hemorage.

6.Left temporal lobe excision and other serious multiple injuries all over the body.”

He was admitted in Rajiv Gandhi Government General Hospital from 01.02.2013 to 04.03.2013. The medical records would reveal the following:

(i) There is a fracture in the left temporal bone and there was a blood clot in the brain for which an operation was performed to remove the same.

(ii) For the fracture sustained on the skull a surgery was conducted and a part of skull was removed.

(iii) There is lack of vision on the left eye due to grievous injuries sustained by the appellant on the left eye.

(iv) Because of the skull injury, the appellant has become paralyzed on the right side and the movement of the right hand and right leg is affected.

That apart, the appellant is suffering from loss of memory and getting fits frequently. PW4/Doctor as early as on 10.09.2014 through Ex.P.10 stated as follows:

“Sustained injury to the left fracture temporal bone skull and left acute SDH front parietal temporal lobe, left craniotomy done with evaluation SDH burr lobe done, trachorpony done on 17.06.2014 CTB gliosis left parietal lobe and cranial bone defect. 1.Post Traumatic headache and giddiness, right sided limbs, and memory loss, speech affected hoarseness of voice due to triachiorpomic and difficulty in swallowing, Due to gliosis left parietal lobe (CTB) (denucion of brain tissue), Right hand forearm paralysed, Right leg mussels power 3/5 walking with help, Craniotomy bone defect needs protection cannot drive to do any work. Or eating using right hand.”

The EEG report taken on 17.06.2014 would show an abnormal record of bilateral cerebral dysfunction. The EEG report is extracted as follows:

“EEG obtained with 10-20 system of electrode application.

Pt was awake during the recording.

Background activity consists of poorly formed alpha waves.

There are slow waves of theta range see bilaterally along with background alpha activity.

No spikes or sharp waves seen”

10. When this Court asked the appellant to appear before this Court, he was produced before this Court in a wheel chair and it is found that his replies to the queries are incoherent. This Court referred the appellant to Rajiv Gandhi Government General Hospital's Medical Board which by its proceedings dated 24.05.2019 stated that his disability is 100%:

“He was thoroughly examined by Neuro Surgeon, Neuro Psychologist, Neurologist, Physical and Rehabilitation Centre, Speech Therapist.

His disability status after consolidated consensus is 100% (Hundred Percent)”

Therefore, from the above it is very clear that the appellant sustained serious injury in the skull. There was a blood clot in the brain and to remove the same, an operation was also done. Once, the brain is affected and blood clot is found to be there, the brain injury may affect at any point of time.

In *“Modi's Text Book of Medical Jurisprudence and Toxicology”, 19th Edition in Chapter XII-Regional Injuries-Head*, it is stated as follows:

“Wounds of the scalp usually heal rapidly though in rare cases fatal results may follow from the supervention of infection, or suppuration may set in, and spread into the brain through the blood vessels or through necrosis of bone resulting from infection, or through an unnoticed fissured fracture. Thus, cases have occurred in which scalp wounds have apparently healed, and yet death has occurred from septic meningitis or brain abscess after a few days or weeks”

Therefore, the contention made by Mr.S.Manohar, learned counsel for the Insurance Company that the claimant was alright, when he appeared before the trial Court and due to some other reason he would have sustained 100%

disability is not sustainable. In the claim petition, it has been categorically stated that the claimant sustained fracture of left temporal bone, paralysis of right side body, loss of vision in left eye, etc. When that is the position, there cannot be any other reason for sustaining 100% disability, other than the injuries sustained by the claimant at the time of accident.

11. Even the Tribunal in paragraph 13 of its order, has categorically stated as follows:

“The petitioner has underwent treatment as stated supra and the procedure being done a left acute SDH front parietal temporal lobe, left crainotomy done with evaluation SDH burr lobe done, trachorpony done CTB gliosis left parietal lobe cranial bone defect. Also right hand forearm paralysed, right leg muscles power 3/5 walking with help, craniotomy bone defect need protection cannot drive to do any work, eating using right hand. The petitioner also having difficult to manage himself in day to day activities and hard struggle with his pain and sufferings. Hence this tribunal is inclined to award a sum of Rs.10,000/- towards pain and sufferings.”

Having found that the right hand is paralyzed, it is not known as to how the Tribunal determined the disability at 33% only. When the person's right side is affected due to brain injury, that person may not be in a position to work at all and therefore, there is loss of 100% earning power on account of the disability sustained by him. Therefore, 33% determined by the Tribunal based on some calculation is erroneous and the same is set aside and this Court re-determines the disability at 100% and 100% loss of income consequently, as per the medical records as well as proceedings of the Medical Board issued on 24.05.2019.

Negligence:

12.The Tribunal based on evidence of eye witness PW2, Ex.P.1/FIR and Ex.P.6/charge sheet rightly found that the driver of the lorry alone was rash and negligent while driving the lorry and caused the accident. While coming to the above conclusion, the Tribunal noted the fact that the driver-cum-owner of the lorry remained exparte. If the driver had adduced evidence, it would have thrown more light about the manner of accident. Moreover, in paragraph No.1 of the written argument filed before the trial Court by the learned counsel for the appellant found in page 32 of the appellant's typed set states that the driver of the lorry pleaded guilty before Magistrate Court in C.C.No.1929/2013 and was fined Rs.1,500/- on 02.07.2013. The said finding is confirmed.

Contributory negligence due to drunken driving:

13.Based on Ex.P.2/discharge summary, the Tribunal found that the claimant was under the influence of alcohol at the time of accident and as per Ex.R4/copy of Accident Register, Ex.P.2/discharge summary & Ex.P.3/out patient record, the Tribunal fixed 50% contributory negligence on the claimant.

14.Whether discharge summary, out patient records and accident register are enough to prove that the appellant was under the influence of alcohol is a question to be delved into. Section 185 of the Motor Vehicles Act, 1988 speaks about drunken driving, which is extracted as follows:

“185. Driving by a drunken person or by a person under the influence of drugs. - Whoever, while driving, or attempting to drive, a motor vehicle -

*(a) has, in his blood, alcohol exceeding 30 mg. Per 100 ml. of blood detected in a test by a breath analyser, or
(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle.*

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two year, or with fine which may extend to three thousand rupees, or with both.

If there is a suspicion that a person is under the influence of alcohol or he was smelling alcohol at the time of accident, the accused drunken driver has to be sent compulsorily to hospital where blood samples have to be taken to detect the contents of the alcohol to verify as to whether the contents of alcohol exceed 30 mg per 100 ml or not or test by breathalyser compulsorily so that the prosecution could succeed in the case filed against the drivers for drunken driving u/s 185 of the Motor Vehicles Act, 1988, apart from u/s.184 for dangerous driving and under Section 279 of IPC.

15.Though Ex.P.2/discharge summary speaks about smelling of alcohol and there is evidence of RW2/Doctor, those evidences are not enough to comply with the requirement under Section 185 of Motor Vehicles Act, 1988.

16.Though this Court is convinced that the appellant was under the influence of alcohol, for not testing to find out the alcohol content in the blood sample from the appellant as per the statutory mandate under Section 185, this Court

is inclined to set aside 50% negligence fixed on the part of the appellant by the Tribunal. However, in view of smelling of alcohol as proved by Ex.P.2/discharge summary, this Court feels it appropriate to fix 10% towards contributory negligence on the part of the claimant.

licence:

17.The contention of the Insurance Company that the claimant was possessing only LMV licence, marked as Ex.P.8 and does not hold transport badge which is a violation of policy condition, was rightly rejected by the Tribunal relying upon the Apex Court judgment in the case of *Mukund Dewangan Vs. Oriental Insurance Company Limited, dated 24.07.2017* in which it has been held that light motor vehicle includes transport vehicles also and a holder of light motor vehicle licence can drive all the vehicles including transport vehicles.

Income:

18.It is proved that the appellant/claimant was a driver and he possessed Ex.P.8/driving licence. The Honourable Supreme Court in *Nita and Others v. Divisional Manager, MSRTC, Kolapur* reported in *2015 (1) TN MAC 161* determined the monthly income of a carpenter at Rs.12,000/- who sustained injuries in the accident which occurred in the year 2011. However, considering the nature of work, this Court fixes a sum of Rs.15,000/- as notional income of the claimant/driver who sustained injuries in the accident occurred during the year 2013.

19.As per Ex.P.8/Driving licence, the appellant was aged about 28 years at the time of accident. As per the Constitution Bench's judgment of the

Honourable Apex Court in *National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC)*, 40% has to be added towards future prospects. Therefore, the monthly income comes to Rs.21,000/- [Rs.15,000/- (+) 40% of Rs.15,000/- viz., Rs.6,000/-].

20.As per the judgment of the Honourable Supreme Court in *Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC)* based on the age of the claimant, the right multiplier is “17”. Therefore, loss of earning would be Rs.42,84,000/- (Rs.21,000/- x 12 x 17). In view of the above, the amount awarded by the Tribunal viz., Rs.4,03,920/- as loss of earning is set aside.

Attendant charges:

21.The Tribunal awarded a sum of Rs.2,000/- under this head which is very meager. The appellant has to depend upon others to do his day today activities. The state in which he was brought to the Court shows that he cannot do any work on his own, not even attend his nature's call. His right side is paralysed and he is unable to do work. He is not in a position to understand what is happening around him. Therefore, he needs an attendant on his side all the time. As per the judgment of the Honourable Supreme Court in *Kavitha Vs. Deepak and others reported in 2012 (2) TNMAC 362*, attendant charges is awarded at Rs.2,000/- per month for 25 years (Rs.2000/- x 25) totaling to Rs.6,00,000/-. Since the Hon'ble Apex Court took a sum of Rs.2,000/- during the year 2004, we fix a sum of Rs.6,000/- per month, considering the year of the accident viz., 2013 and during that time it would have been impossible to get an attendant for less than Rs.6,000/- per month.

Therefore, attendant charges would be at Rs.18,00,000/- [Rs.6,000/- (x) 12 (x) 25].

Pain and suffering:

22.The Tribunal has awarded a sum of Rs.10,000/- under this head which is on the lower side. The same is enhanced to Rs.2,50,000/- as the claimant sustained multiple injuries and underwent various surgeries.

Transportation charges:

23.The Tribunal has awarded a sum of Rs.5,000/- under this head, the same is enhanced to Rs.50,000/- as the claimant has to go for treatment continuously.

Extra nourishment:

24.The Tribunal has awarded a sum of Rs.5,000/- under this head, the same is enhanced to Rs.1,00,000/-.

Loss of amenities:

25.There is no amount awarded by the Tribunal under this head. Since claimant sustained 100% disability, a sum of Rs.3,00,000/- is awarded under this head.

Future Medical expenses:

26.No amount was awarded by the Tribunal towards future medical expenses. Considering the skull injuries which may affect at any time and the claimant's mental faculties are not alright, sustaining 100% disability, he requires regular

treatment. Hence a sum of Rs.2,00,000/- is awarded towards future medical expenses.

Loss of marital bliss to wife of the claimant:

27.The wife of the claimant sustained agony and she is deprived of marital bliss/marital pleasure from her husband as the claimant is in a vegetative status as his mental faculties are not alright, becoming 100% disabled, incapable of performing marital obligation and she has to live like a spinster which is forced on her by the accident, taking care of her husband like a nurse. The said loss can neither be estimated nor compensated as it is capable of affecting her physiologically and psychologically, especially, she is stated to be in her twenties and therefore, a sum of Rs.5,00,000/- is given to the wife of the claimant under this head.

<i>Head</i>	<i>Amount (Rs.)</i>
Loss of earning capacity	42,84,000
Attendant charges	18,00,000
Pain and suffering	2,50,000
Transportation charges	50,000
Extra nourishment	1,00,000
Loss of amenities	3,00,000
Loss of marital bliss to wife of the claimant	5,00,000
Future medical expenses	2,00,000
Total	74,84,000
10% deduction towards contributory negligence	7,48,400
Total Compensation	67,35,600

Hence the compensation awarded to the claimant comes to Rs.74,84,000/-.

Since 10% contributory negligence has been fixed on the part of the claimant,

the total compensation payable would be Rs.67,35,600/- rounded off to Rs.67,35,000/-. The rate of interest fixed by the Tribunal at 7.5% per annum is confirmed.

28. Even though the appellant/claimant sought for a sum of Rs.30,00,000/- as compensation for the disability sustained by him due to the injuries caused in the road accident on 01.02.2013, based on the evidence and the status of the victim, this Court has awarded compensation to the tune of Rs.67,35,000/-.

29. What is required is just compensation. This Court has got jurisdiction and power under Order 41, Rule 33 read with Section 151, C.P.C., Section 173 of the Motor Vehicles Act and under Article 227 of the Constitution of India to award more compensation, if the facts of the case warrant. A Three Judges Bench of Hon'ble Supreme Court in *Nagappa v. Gurudayal Singh, 2004 (2) TN MAC 398 (SC) : 2003 (2) SCC 274*, held that the Court can award more compensation than the amount claimed. The same view is reiterated in *National Insurance Co. Ltd. v. Saroj and others, 2009 (1) TN MAC 619 (SC); Clara v. T. Harendranath, 2007 (1) MLJ 600*.

30. The Appeal under Section 173 of the Motor Vehicles Act is a statutory Appeal and the contention raised by the appellant should be considered and findings should be arrived at by this Court based on the evidence. This view is supported by the judgment of the Apex Court in *Jaising v. Satinder, 2001 (1) ACC 6444 (SC)* and in *Eastern Goal Field v. Mayadevi, 2001 (2) ACC 1064 (SC)*. When the facts and evidence satisfy this Court to award more amount than prayed for, this Court is not powerless to award higher

compensation. The proceedings before the Special Tribunal constituted under Section 165 of the Motor Vehicles Act are summary in nature governed by Section 169 of the Motor Vehicles Act and the same has been held in ***Mantoo Sartar v. Oriental Insurance Co. Ltd. and another, 2009 (1) TN MAC 68 (SC)***. It has been held by the Supreme Court in ***Ningamma and another v. United India Insurance Co. Ltd., 2009 (2) TN MAC 169 (SC) : 2009 ACJ 2020 as follows:***

“25. Undoubtedly, Section 166 of the Motor Vehicle Act deals with ‘just compensation’ and *even if in the pleadings no specific claim was made under Section 166 of the Motor Vehicle Act, in our considered opinion a party should not be deprived from getting ‘just compensation’* in case the claimant is able to make out a case under any provision of law. Needless to say, the Motor Vehicle Act is beneficial and welfare legislation. In fact, the Court is duty-bound and entitled to award ‘just compensation’ *irrespective of the fact whether any plea in that behalf was raised by the claimant or not*. However, whether or not the claimants would be governed with the terms and conditions of the Insurance Policy and whether or not the provisions of Section 147 of the Motor Vehicle Act would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered atleast by the High Court.”

In another judgement in ***Rajrani v. United Insurance Company Limited, 2009 ACJ 2003***, the Apex Court held that *it is not necessary in proceedings under Motor Vehicles Act to go by any rules of pleadings or evidence and that Section 166 of the Motor Vehicle Act speaks about grant of “just compensation”* and that Courts' duty is to award just compensation and that it would try to arrive at the said findings irrespective of the facts *as to whether any plea in that behalf was raised by the claimant or not*. Therefore,

strict rule of pleadings and evidence is not mandatory before the Tribunal as spelt out in *Simla Devi and others v. Nimachal Road Transport Corporation and others, 2009 (1) TN MAC 700 (SC)*. It has been held in *Union of India and another v. Saraswathi Debnath and others, 1995 ACJ 980*, that the Claim Petition has to be decided on the basis of preponderance of probability and evidence should not be scrutinized as is done in Civil and Criminal cases. It is also settled principle of law that it is not necessary to appreciate the finer details of evidence to arrive at a conclusion in the claims' cases before the Tribunal. Hence this Court is justified in granting more compensation, even if lesser amount is sought for.

31. Apart from that, this Court has to consider the beneficial nature of the legislation. Chapter X to XII of the Motor Vehicles Act, 1938 were incorporated by the Parliament for the benefit of innocent motor accidents victims. The beneficial nature of the Act has been declared by the Hon'ble Supreme Court in a number of cases including in *National Insurance Co. Ltd. v. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) : 2004 (2) SCC 297* (IV Judges Bench), in *Ningamma and another v. United India Insurance Co. Ltd., 2009 (2) TN MAC 169 (SC) : 2009 ACJ 2020* and in *Sohan Lal Passi v. P. Sesh Reddy, AIR 1996 SC 2627*. This Court is duty bound to keep in mind the social welfare and beneficial legislation, while dealing with claims under the act. Technicalities should be divorced when deciding the matter arising out of Motor Vehicles Act claims and justice should be rendered completely. The compensation awarded should be fair and reasonable and should not be arbitrary or very low. In an endeavour to render justice only, this Court awards compensation more than claimed by the claimants in the Petition.

32. This Court under Section 173 of the Motor Vehicles Act can re-appreciate the whole evidence to decide the matter. This Court draws support for the aforesaid proposition from the Apex Court judgment in ***Smt. Thokchom Onger Sangeetha v. Oriental Insurance Co., 2008 (1) TN MAC 59 (SC): AIR 2008 SC 245***. It is settled law that an Appeal is the continuation of original proceedings and this Court can decide the matter independently and award “Just compensation”.

33. Under Order 41, Rule 33 read with Section 151 of Civil Procedure Code, in order to render justice this Court can award more compensation based on the evidence. The power and the discretion are vested with this Court to enhance the amount according to the facts of the case, if the compensation awarded by the Tribunal is not “just”. Even in the absence of any Appeal/Cross-Appeal by the claimants, this Court can enhance the compensation in this Appeal preferred by the Insurer. The aforesaid proposition has been settled by the Hon'ble Supreme Court in –

(1) NAGAPPA v. GURUDAYAL SINGH and OTHERS,

2004 (2) TN MAC 398 (SC) : 2003 (2) SCC 274.

(2) MAHANT DHANGIR and ANOTHER v. MADAN MOHAN and OTHERS, AIR 1938 SC 54.

(3) STATE OF PUNJAB v. BAKSHISH SINGH, 1998 (8) SCC 222.

(4) THE APSRTC and ANOTHER v. RAMA DEVI and OTHERS, 2008 (1) TN MAC 234 (SC).

(5) *M.D., PALLAVAN TRANSPORT CORPORATION LTD. v. KALAVATHI*, 1988 ACJ 151.

(6) *M.D., THANTHAI PERIYAR TRANSPORT CORPORATION LTD. v. SUNDARIAMMAL*, 1999 (2) CTC 560.

(7) *M.D., ANNAI SATHYA CORPORATION LTD. v. JANARDHANAN*, 2000 (2) CTC 272.

34. Even otherwise, under Article 227 of the Constitution, this Court has power and jurisdiction to pass such a decision or direction as the inferior Court/Tribunal should have made. The above ratio was laid by Apex Court in *Sahil (Smt.) v. Manojkumar and others*, 2004 (4) SCC 785. In *Trimbak Gangadhar v. Ramachandra Ganesh*, AIR 1977 SC 1222, it has been held that where the order passed by the Tribunal results in manifest injustice, this Court can justifiably intervene under Article 227 of the Constitution of India. Moreover, this Court, can invoke Article 227 “*suo motu*” and decide the matter, if the Court/Tribunal below has not passed orders correctly. This Court draws support for the above said view from the judgment of Supreme Court in *Ahmedabad MFG and Calico PTG Co. Ltd. v. Ram Tahel Ramnand and others*, AIR 1972 SC 1598.

35. The appellant/claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the

claimant and thereafter, WWW.LIVELAW.IN transfer the remaining award amount to the claimant's account.

36. The Insurance company is directed to deposit the entire award amount along with interest (except for Rs.2,00,000/- awarded towards future medical expenses) and costs as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer a sum of Rs.27,35,000/- along with interest and costs to the personal bank account of the appellant/claimant through RTGS within a period of one week thereon. The remaining award amount shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, for a period of 15 years. The wife of the claimant is permitted to withdraw interest accruing on such deposit once in a month.

37. Though this Court has set aside the negligence on the part of the appellant, fixing the liability at 50% on the ground of drunken driving, it is a fact that precious lives are lost on the road due to accidents caused by drunken driving which is one of the main causes for road accidents. It is very unfortunate that the Government itself is responsible for the said position. One could see that there is a separate parking lot outside TASMAC shops. It is not known how the Police allows two wheeler riders to have their vehicles parked outside TASMAC bars and how they are allowed to ride the vehicles which would only prove that there is no proper checking of drunken driving. If at all, it is only during weekends, police is seriously checking drunken driving whereas

accidents due to drunken driving is caused through out the year causing loss of lives and injuries.

38. Therefore, the police should take steps to check whether the riders are drunk by using breath analyser and separate police booths should be put up for this purpose.

39. The police should take the drunken drivers to labs to test alcohol content in the blood to comply with the provisions of Section 185 of Motor Vehicles Act, 1988. Otherwise, police cannot prove drunken driving of the accused before the Court. For non-compliance of Section 185 of Motor Vehicles Act only, this Court is compelled to set aside 50% of contributory negligence fixed on the part of the claimant. Whenever any driver found to be smelling of alcohol is brought to the hospital for treatment, the Doctors are duty bound under Section 185 of the Motor Vehicles Act to collect the blood sample for alcohol test.

40. India ranks first in the road accident deaths across 199 countries reported in the **World Road Statistics 2018** followed by China and USA. **WHO's Global report of road safety 2018** states that almost 11% of the accidents related deaths in the World occurred in India. In 2018, 1,51,417 lives were lost and 4,69,418 persons got injured in the road accidents which occurred in India, in total number of 4,67,044 road accidents which occurred in 199 countries.

41. Two wheelers accounted for 35.2% of the total accidents in 2018. Light vehicles comprising of Cars, Jeeps and Taxis account for a share of 24.3% in total accident. Following are the details of the persons killed:

- i. Pedestrians killed - 15%
- ii. Cyclists killed - 3%
- iii. Riders of the two wheeler - 37%
- iv. Drivers and passengers of Light Vehicles - 20.3%
- v. Young adults in the age group of 18-45 years accounted for 70% of road accident victims.
- vi. The share of men in number of total accident deaths was 86%
- vii. The share of women is around 14% in 2018.

Though as per 2018 statistics deaths due to drunken driving account for 2.8% of the persons killed, less numbers have been shown due to various reasons like

(i). Non registration of FIR for drunken driving

(ii). Non subjecting of riders and drivers to alcohol test for drunken driving.

For the purpose of claiming insurance amount from the insurance company, Section 185 is not added deliberately. If drunken driving cases are correctly registered, definitely, deaths due to drunken driving would be much more.

42. Road accidents in India claimed 415 lives, injured 1286 people, each day in the year 2018. Statistics on road accidents in India for the year 2018 shows an upper trend, both in terms of accidents and number of lives lost in the country. The year 2017 saw a total number of 4,64,910 road accidents in India, claiming 1,47,913 lives and 4,17,917 injured persons. Following table would give the details of the number of road accidents, number of persons killed and injured in the last five years (2014-2018)

<i>Year</i>	<i>Total Number of road accidents (in numbers)</i>	<i>% change</i>	<i>Total Number of persons killed (in numbers)</i>	<i>% change</i>	<i>Total Number of persons injured (in numbers)</i>	<i>% change</i>
2017	489400	-	139671	-	493674	-

<i>Year</i>	<i>Total Number of road accidents (in numbers)</i>	<i>% change</i>	<i>Total Number of persons killed (in numbers)</i>	<i>% change</i>	<i>Total Number of persons injured (in numbers)</i>	<i>% change</i>
2015	501423	2.46	146133	4.63	500279	1.38
2016	480652	-4.14	150785	3.18	494624	-1.13
2017	464910	-3.28	147913	-1.90	470975	-4.78
2018	467044	0.46	151417	2.37	469418	-0.33

43. What is worrying is despite low vehicle per capita, India stands 3rd in global road accident rankings. Each year about 3 to 5% of the GDP of the country is invested in road accidents. Though India has about 1% of the global vehicle population, it accounted for 6% of the World's Road Traffic Accidents killing highest number of people in the World viz., 1,50,785 persons. Though 22,11,439 accidents occurred in USA during 2018, the number of people died in the accident is only 37,461 whereas in 4,80,652 accidents in India, 1,50,785 persons died. It would only go to show that

- (a). All the stakeholders are not vigilant enough to prevent the avoidable road accidents.
- (b). The roads are not properly laid, repaired and maintained by the authorities.
- (c). The drivers and riders are not following road rules
- (d). The Drivers are bent upon indulging in over speeding, drunken driving, apart from non wearing of helmet etc.
- (e). Though stringent punishments have been contemplated as per the Motor Vehicles Amendment Act, 2019, levying heavy fine and punishment for violation of traffic offences, it has not been given effect, in many States, including Tamil Nadu.

44. According to a **World Health Organization's Study**, over the decade ending 2016, the country's annual per capita liquor consumption doubled to 5.7 litres. Due to liberalization policy, increase in income, change in attitude towards alcohol consumption, the liquor consumption has increased. At 2.7 lakhs crores, India's alcohol consumption is among the world's fastest growing. Globally 6% of the industrial growth was driven by India. The country is world's largest producer of Whisky. There are 16 crore people in the Country, who consume alcohol. The consumption level is very high among the male population. 1.6 % women and 27.3% men are using alcohol.

45. A research paper “**A Study of Incidence of Alcohol Use In Fatal Road Traffic Accidents**” published in **Journal of Indian Academic Forensic Medicine, January - March 2015, Volume 37, No. 1** was conducted by **Baruah, Aditya & Chaliha, Rituraj** to evaluate the causes and other contributing factors leading to death in Road traffic accidents with alcohol consumption and to study the level of alcohol present in body by analysis of blood. In the study which was conducted on Victims of fatal road accidents cases brought to mortuary of Gauhati Medical College and Hospital for medico-legal autopsy from 1st July 2013 to 30th June 2014. Blood samples were collected from femoral vein. A total number of 3034 autopsies were carried out during the study period of which deaths due to road traffic accidents have been attributed to 952 cases. Out of these 952 cases, 188 cases had evidences of alcohol in their blood constituting nearly 20% of total accidents involved. Highest number of cases occurred between 6.00 p.m. - 12 midnight and 12 noon - 6.00 p.m.

The study made the following conclusion :-

“Drunk driving is a major problem in India and other developing regions of the world. The problem is unrecognized and hidden due to lack of good quality research data from many countries. Strict enforcement supplemented with education is one of the most powerful tools to tackle the problem in low - and middle - income countries and needs serious consideration.

Many other measures like increasing the legal drinking age, restricting the availability of alcohol by limiting timings, and controlling the unabated promotion of alcohol seems promising, but needs implementation. Many broader issues also need closer examination to develop and implementation of rational alcohol policies. As such a few suggestions are advocated:

- 1. National information systems should be strengthened with appropriate knowledge, skills, techniques and resources to include information on driving under the influence of alcohol as an important element in road safety information systems within police and health sectors.*
- 2. Independent studies by medical institutions should be undertaken periodically to examine the problem by both qualitative and quantitative research methods.*
- 3. Health screening for alcohol problems should be undertaken in hospital emergency rooms among all persons with a RTI.*
- 4. Physicians in emergency rooms should be trained to detect alcohol involvement in RTIs and use of breathalyzers should be promoted.*
- 5. The autopsy centers in various parts of the country should be provided with their own laboratories and institutions for carrying out the blood alcohol estimations and to not only depend on the Forensic Science Laboratories for the results. This will also help the enforcement agencies in implementing the law of the land*

6. *The existing sections of the motor vehicles Act, which deal with drinking and driving, should be widely publicized through multimedia channels.*

7. *Current enforcement mechanisms should be reinforced by ensuring the availability of trained police and dedicated teams; the use of breathalyzers in a scientific manner; the introduction of random checks; an increase in current penalty levels; and to the strict enforcement and implementation of laws in a random (geographically), visible, uniform and regular (periodically) manner.*

8. *Public education programmes must be specific and target oriented.”*

46.A research paper " **Blood Alcohol Levels in Road Traffic Accidents - Factors associated and the relationship between history of alcohol consumption and blood alcohol detection**" authored by Kundavaram Paul Prabhakar Abhilash, Devraj Nath, J. Koushik, Arun Jose, Gina Maryann Chandry reported in International Journal of Critical Illness & Injury Science 2019 Volume 9 Issue No.3 states as follows:

"Abstract

Introduction: *Alcohol consumption contributes to a significant number of road traffic accidents (RTAs), and data regarding the reliability of history and blood alcohol content (BAC) in RTA victims are scant.*

Methodology:

This retrospective study was conducted in the emergency departments (EDs) over 6 weeks. All adult RTAs presenting within 12 h of the incident were included for analysis.

Results:

The study cohort included 369 RTA patients, with the mean interval before presentation being 3 h (standard deviation: 2.22). Two-wheeler accidents (77.2%) were the predominant mode of injury. Usage of a helmet and seat belt was documented in a meager (6.4%

[17/267] and 8.8% [3/34], respectively). A positive history of alcohol consumption was reported by 19.5% of cases (72/369). However, BAC was detectable in 30.1% of cases (111/369), with an alarming 19.78% (73/369) being above the legal limit for driving. Nearly 77.5% (86/111) of those who tested positive for alcohol consumption were driving the vehicle involved. Positive BAC levels showed a significant association with young age (18-39 years), male gender, two-wheeler usage, and between 5 PM and 12 AM.

Conclusion: A history of alcohol consumption leading to an RTA is not reliable in the ED. Hence, measuring BAC levels in all RTA patients provides an objective and reliable form of documentation for medico-legal purposes."

47.A research paper "Drunk Driving Deduction using Carignition Locking" authored by Keerthana K of Saveetha Institute of Medical and Technical Science published in "International Journal of Pure and Applied Mathematics", Volume 19 Number 16 2018, pages 2997-2008 is to give an idea and inventive method for avoiding drunken driving of a motorcar by locking the car.

The conclusion of papers reads as follows:-

"In this project we have built up a real time model that can automatically lock the motor engine when a drunken driver tries to drive a car. Now a days car collisions are mostly observed. By fitting this alcohol sensor into the car, we can save the life of the driver and furthermore the rest of the travellers. The life time of the task is high. It has low or zero support cost and obviously low power utilization. This is a developed system to check drunken driving. By executing this outline a safe car travel is possible decreasing the mishap rate because of drinking. By executing this outline, drunken drivers can be controlled so are the mishaps because of drunken driving. It also suggests the Government must authorise laws to introduce such circuit in each car and must manage all car

organizations to pre-install such systems while manufacturing the car itself. If it is achieved then the death rates because of drunken driving can be brought to least."

In view of the above, to control and prevent drunken driving and consequential loss of lives, people getting injured and loss of property, strict implementation of Motor Vehicles Act is essential. Unless police deal with the violators firmly, it is impossible to prevent the loss of lives due to drunken driving resulting in shattering of thousands of families every year.

48. Considering seriously the loss of many precious lives in USA, there is a push for effective legislation that would require the new US vehicles to have alcohol deducting devices that stop drunk drivers before they start the vehicle. The effort is backed by "**Mothers against drunk driving**" (MADD). As per the proposed Act, namely, Reduce Impaired Driving for Everyone Act or RIDE Act would require automakers to build cars and trucks with Passive Deduction System/Alcohol Detecting Devices that prevent the vehicle from operating if the driver is impaired. Such devices known as "Ignition Interlocks" are widely used for those charged and convicted of drunken driving in USA.

49. Section 202 of the Motor Vehicles Act speaks about power to arrest without warrant for the offences of Drunken Driving under Section 185 and dangerous driving under Section 184 of the Act. Section 202 of the Act is usefully extracted as follows:

"202. Power to arrest without warrant. - (1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197 :

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle."

When the statute gives power to the police to arrest the drunken drivers, the said power has to be exercised not only in the interest of the drunken drivers but also in the interest of other riders of the vehicles and common pedestrians. If the drunken drivers are not arrested, certainly there would be more chances for causing accidents. Mostly the powers under Section 202 of the Act is not exercised by the police enabling many people to indulge in drunken driving. Therefore, a direction is issued to the police to arrest the drunken drivers under Section 202 of the Motor Vehicles Act for violation of Sections 184 and 185 of the Act.

Section 203 speaks about the breath test which is extracted as follows:

"203. Breath tests. - *(1) A police officer in uniform or an officer of the Motor Vehicle Department as may be authorised in this behalf by the Department, may require any person driving or attempting to drive a motor vehicle in a public place to provide one or more specimens of breath for breath test there or nearby, if such police officer or officer has any reasonable cause to suspect him of having committed an offence under section 185:*

Provided that requirement for breath test shall be made (unless it is made) as soon as reasonably practicable after the commission of such offence.

(2) If a motor vehicle is involved in an accident in a public place and a police officer in uniform has any reasonable cause to suspect that the person who was driving the motor vehicle at the time of the accident had alcohol in his blood or that he was driving under the influence of a drug referred to in section 185 he may require the person so driving the motor vehicle, to provide a specimen of his breath for a breath test -

(a) in the case of a person who is at a hospital as an indoor patient, at the hospital,

(b) in the case of any other person, either at or near the place where the requirement is made, or, if the police officer thinks fit, at a police station specified by the police officer :

Provided that a person shall not be required to provide such a specimen while at a hospital as an indoor patient if the registered medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or object to the provision of a specimen on the ground that its provision or the requirements to provide it would be prejudicial to the proper care or treatment of the patient.

(3) If it appears to a police officer in uniform, in consequence of a breath test carried out by him on any person under sub-section (1) or subsection (2), that the device by means of which the test has been carried out indicates the presence of alcohol in the person's blood, the police officer may arrest that person without warrant except while that person is at a hospital as an indoor patient.

(4) If a person, required by a police officer under sub-section (1) or sub-section (2) to provide a specimen of breath for a breath test, refuses or fails to do so and the police officer has reasonable cause to suspect him of having alcohol in his blood, the police officer may arrest him without warrant except while he is at a hospital as an indoor patient.

(5) *A person arrested under this section shall while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.*

(6) *The results of a breath test made in pursuance of the provisions of this section shall be admissible in evidence."*

The police is duty bound to check drivers using breathalyzers.

Since the statute speaks about the power to arrest the drunken drivers without warrant under Section 202 of the Motor Vehicles Act, there shall be a direction to the police authorities to compulsorily conduct breath test on the riders under Section 203 of the Motor Vehicles Act and arrest the drunken drivers under Section 202 of the Motor Vehicles Act.

50. Taking into consideration the dangers involved in drunken driving, it is appropriate for the police to arrest the drunken drivers, under Section 202 and test them as per Section 203 of the Motor Vehicles Act, 1988. Further, police has to book the offenders under Section 279 IPC which is a cognizable offence. It is appropriate to extract the said provision:

279. Rash driving or riding on a public way.—*Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

The Hon'ble Supreme Court in a recent order in the case of ***State of Arunachal Pradesh v. Ramachandra Rabidas @ Ratan Radidas and another*** in ***Criminal Appeal No.906 of 2010*** vide order dated 04.10.2019 has held that

the Motor Vehicles Act does not bar prosecuting the offenders under IPC, thereby the Hon'ble Supreme Court held that the prosecution can lie both under IPC and under the provisions of the Motor Vehicles Act. Hence the Police is duty bound to prosecute the drunken drivers under Sections 185, 202, 203 of the Motor Vehicles Act and Section 279 of IPC.

51. That apart, the licence of the drunken drivers shall be suspended as per Section 19(f) of the Motor Vehicles Act, 1988 which is extracted as follows:-

"19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence.- (1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he-

(a)....

(b)....

....

(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act;

Similarly, as per Rule 21 of Central Motor Vehicles Rules, 1989 the licence holder could be disqualified by the licensing authority for various acts particularly driving vehicle while under the influence of drinks or drugs. It has been included under Rule 21(16) of the Central Motor Vehicles Rules, 1989 which is extracted as follows:-

"21. Powers of licensing authority to disqualify.—For the purpose of clause (J) of sub-section (1) of section 19, the commission of the

following acts by holder of a driving licence shall constitute nuisance or danger to the public, namely:—

(1)....

(2)....

....

(16).Driving vehicle while under the influence of drink or drugs."

If the licences of the drunken drivers are cancelled or suspended or they are disqualified from holding driving licence, definitely it will deter the drivers from indulging in drunken driving. Not only prosecuting the offenders for drunken driving, the transport department should also simultaneously take steps to suspend or cancel the driving licence given to the offenders under the Motor Vehicles Act as stated above. Otherwise, the great danger which is threatening the humanity everyday cannot be contained.

52. It is not only in this case drunken driving played havoc in the life of victim. Every day, it takes away life of very many people. The statistics regarding drunken driving and consequential deaths are either underestimated or deliberately unreported. It is said that 30 to 40% of riders/drivers are indulging in Drunker Driving. With a new survey revealing that deaths in accidents caused by drunken driving have witnessed a 20 per cent rise in the last six years. Delhi topped 53 Indian cities in fatal road accidents with 2,213 deaths in the year 2016. Out of these, drunken driving was responsible for at least 1,550 casualties - a shocking 70 per cent. The report was prepared by Community Against Drunken Driving (CADD), an NGO working in this field for the past 16 years, with the help of Delhi Police and National Crime Records

Bureau. It has revealed that of all those had driven under the influence of alcohol, only 6.94 per cent were stopped and prosecuted by the police. Thus, the prosecution rate for drunk drivers in the Capital is abysmally low at less than 7 per cent. This is despite measures like Operation Chakravyuha and licence-seizure exercises being in place.

53. Nearly one-sixth of drivers feel drunk driving is the main reason for road accidents, according to a recent survey primarily conducted among drivers across 15 states. The survey conducted as a part of a study for road transport ministry for developing a comprehensive strategy to improve road safety has thrown up these interesting aspects at a time when the government data shows that only 3% of accidents are caused due to drunk driving.

54. The following are a few of deaths caused due to drunken driving in India.

(i). In a shocking accident which occurred at 1.00 A.M on 12.10.2014 on Velacherry - Taramani 100 feet road, a drunk driver drove over three platform dwellers including a pregnant woman.

(ii). In August 2014, a drunk driver drove his car over a platform dweller and killed and injured 12 others in Nigmabodh Ghat on Ring Road in New Delhi.

(iii). Three drunken naval officers were arrested in Vizhagapattinam in May 2016 for driving over a pavement dweller and killing him.

(iv). In April 2018, a drunk female B.Tech student ran her car over a pavement dweller killing him at Kushaigud area of Hyderabad.

(v). A drunken driver drove over pavement dwellers killing 2 persons at Gandhi Nagar Railway Station in Jaipur in August 2018.

(vi).A drunk driver drove his car over a group of pavement dwellers killing one and injuring three in June 2019 in Nizamuddin, New Delhi.

(vii).An IAS officer in an inebriated state drover his car killing a journalist in August 2019 at Thiruvananthapuram.

(viii).A drunk young man mowed down seven people killing two and injuring five on 1st January 2020 in Ranchi.

In view of many accidents due to drunken driving, the Hon'ble Apex Court insisted the necessity to have deterrent punishment in the case of ***State v. Sanjeev Nanda*** reported in ***(2012) 8 Supreme Court Cases 450***. It was held in paragraphs 86 and 87 as follows:-

"86.Drunken driving has become a menace to our society. Every day drunken driving results in accidents and several human lives are lost, pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain, etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernibility. In short, alcohol leads to loss of coordination, poor judgment, slowing down of reflexes and distortion of vision.

87.Punishment meted out to a drunken driver is at least a deterrent for other such persons getting away with minor punishment and fine. Such incidents are bound to increase with no safety for pedestrians on the roads. The contention raised by the learned Senior Counsel that the accused was not under the

influence of liquor or beyond the limit prescribed under the Motor Vehicles Act and he was in his senses and the victims were at fault being on the middle of the road, is without any substance and only to be rejected. "

55. Though the issue before this Court is with regard to quantum of compensation awarded to the appellant, the issue about drunken driving arises for consideration as contended by the Insurance Company. This Court cannot close its eyes and mechanically decide the quantum of compensation alone without addressing the main cause for the accident and consequently this case. This Court is bound to go into the basic reason for the cause and has a duty to issue remedial direction as per the words of Saint Thiruvalluvar who wrote about 2000 years ago.

"neha; eho neha; Kjy; eho mJ jzpf;Fk;
tha; eho tha;g;gr; bray;"

Therefore, this Court has every responsibility to give appropriate directions, to safeguard the rights including the right to live as enshrined in Article 21 of the Constitution of India as this Court is the guardian of fundamental rights of the citizens. When thousands of fellow citizens are being killed due to drunken driving, this Court cannot remain a silent spectator with folded hands and this Court has to travel beyond its jurisdiction to pass novel, unconventional and remedial directions as a Constitutional Court to protect fundamental rights of citizens in the interest of the society. In spite of grim situation, if this Court shirks its responsibilities, it would be injustice done to the society by this Constitutional Court, apart from being incapable of implementing the provisions of Motor Vehicles Act like Sections 185, 202, 203 and 19(f).

56. The Hon'ble Supreme Court in *Baby vs. Travancore Devasvom Board and others* reported in **1998 (8) SCC 310** held that the power of the High Court under Constitution of India is always in addition to the power of the revision under Kerala Land Reforms Act. Similarly the power under **Article 226/227** is in addition to **Section 173** of the M.V.Act. That apart in *Jasbin Singh vs State of Punjab* reported in **2006 (8) SCC 294** it was held that the power of this Court in administrative and judicial nature could be exercised suo motu also. In *Union of India and another vs Kriloskar Preumatic Co.Ltd* reported in **1996 (4) SCC 453** it was held that the power conferred under **Article 226/227** is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. In view of the above authorities to enforce **Sections 19(f), 185, 202 & 203** of the M.V.Act, this Court *suo motu* invokes **Articles 226/227** and issue directions.

57. One of us (Justice N.KIRUBAKARAN) directed the State Government to implement S.129 of Motor Vehicles Act by making wearing of helmet compulsory, invoking Article 226 suo motu in the case arising out of Motor Accident claim in *R.Mallika and others v. A.Babu and others* in **C.M.A.No.3235 of 2014** on 08.06.2015. Directions were given in paragraph 48 of the said CMA order and the same is usefully extracted hereunder:

"48. Therefore, this Court directs:

(a) Respondents 3 and 4 shall inform the public through media on or before 18.6.2015 that wearing of helmet by two wheeler riders is compulsory from 1.07.2015, failing which, all the documents of

the two wheeler including driving licence of the rider shall be impounded under [Section 206](#) of the Act as per the procedure stated therein and impounded documents would be released only on production of new ISI certified helmet with purchase receipt.

(b) If the order of this Court, namely, direction given to the respondents 3 & 4 to inform the people through media on or before 18.06.2015 about wearing of helmet compulsorily from 1.07.2015 onwards, is not complied with, the 3rd and 4th respondents namely, Home Secretary, Tamil Nadu and the Director General of Police, Chennai, shall appear before this Court on 19.6.2015.

(c) Respondents shall suspend the driving licence of the riders and to cancel after enquiry for violation of [Section 129](#) of the Motor Vehicles Act, after registering a case for violating the said provision.

(d) Respondents 3 and 4 are directed to install CCTV cameras in important junctions and Roads including National Highways to monitor the wearing of helmet by two wheeler riders and those fail to wear helmets have to be issued notice about the non-wearing of helmet and to cancel the licence after enquiry.

(e) The fifth respondent (Central Government) shall go into the details of the design of the helmets to provide visibility on the sides as well as at the front of the wearer of helmet, as suggested by the intervenor.

(f) Respondents 3 and 4 shall file details of number of cases filed and other connected data every two months once before this Court.

(g) The fifth respondent shall direct all the States to monitor the wearing of helmet compulsory and take actions.

(h) The respondents are directed to conduct programmes sensitizing two wheeler riders about the necessity to wear helmets by distribution of pamphlets, short films, advertisements etc."

In compliance with the directions given by this Court in the above Civil Miscellaneous Appeal, the State of Tamil Nadu passed an order making wearing of helmet compulsory by two wheeler riders from 1.7.2015. The said order was challenged before this Court in **W.P.No.19034 of 2015** filed by one **J.N.Nimmu Vasanth** and the First Bench of this Court by order dated 30.06.2015 dismissed the same. Paragraphs 2 and 3 of the order are usefully extracted as follows:

"2. Petitioner states that wearing Helmet is per se not desirable and causing harassment. The above submission is contrary to the provisions of the [Motor Vehicles Act, 1988](#) and the Rules therein. This is the second petition today, which is nothing but publicity interest litigation, dealing with an important issue of road safety where the learned Single Judge of this Court has directed enforcement of norms of wearing Helmet. We have dismissed the other writ petition being W.P.No.19020 of 2015 dealing with the same issue.

3. There is no public interest or all involved and the writ petition is dismissed."

Similarly, the said order was also challenged before this Court in **W.P.No.19020 of 2015** filed by one **D.Gopalakrishnan** and the First Bench of this Court by order dated 30.06.2015 dismissed the same. The said order is usefully extracted hereunder:

"The so called Public Interest Litigation is nothing but a publicity endeavour on the anvil of enforcement of law which has been in existence, but observed in breach. It is known that the learned Single Judge of this Court has passed orders for enforcement of the provisions qua wearing of Helmet in view of large number of accidents where serious injuries and deaths are caused by not complying with the requirement of wearing Helmet.

2. *The learned counsel for the petitioner contends that there is no provision for seizure of papers, but only imposition of fine. That being the position, if in a particular case there is any breach of rule or law, that individual would have a grievance. Similarly, as to who is exempted, is again a matter provided for in the rules and there is no element of Public Interest Litigation in this case. 3. The writ petition being misconceived and an endeavour to prevent the enforcement of law by tomorrow, is dismissed. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed."*

Therefore, the power of this Court to issue directions even in CMA has been upheld by the Hon'ble First Bench of this Court. After all, rules are handmaids of justice. What has to be seen is public good and justice has to be done.

58.As the respondent insurance company pleads that the appellant is guilty of drunken driving, though unsuccessfully, taking into consideration loss of thousands of lives due to drunken driving in violation of Section 185 of Motor Vehicles Act, this Court, suo motu, invokes Article 226 and issue directions to the police to exercise power under Section 202 of Motor Vehicles Act to arrest the drunken drivers and conduct breathalyser test or blood test. The police authorities shall file compliance reports every month giving details of the persons arrested for drunken driving in every district. It is only to deter the drivers to drive under intoxication.

59.As the case exhibits how drunken driving plays havoc in people's life and shatter families, this Court would like to give a few remedial suggestions and directions suomotu invoking Article 226 of the Constitution. Therefore, this Court, suo motu, impleads,

(a) Union of India,

Rep. by its Secretary,
Ministry of Roads and Surface Transport,
New Delhi.

(b) Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi.

(c) State of Tamil Nadu
Rep. by its Secretary,
Transport Department,
St. George Fort,
Chennai.

(d) State of Tamil Nadu,
Rep. by its Secretary,
Health Department,
St. George Fort,
Chennai.

(e) State of Tamil Nadu,
Rep. by its Secretary,
Revenue and Commercial Taxes Department,
St. George Fort, Chennai.

(f) Director General of Police,
Mylapore, Chennai.

as party respondents 3 to 8 to the proceedings. Mr.G.Karthikeyan, learned Assistant Solicitor General takes notice on behalf of respondents 3 and 4 and Mr.Jayaprakash Narayanan, learned Government Pleader takes notice on behalf of respondents 5 to 8.

60.For the above reasons, this Court issues the following directions:

(1).The respondents police authorities shall arrest the drunken drivers under Section 202 of the Motor Vehicles Act and subject the drivers for Breathalyser Test under Section 203 of the Motor Vehicles Act for alcohol detection as per Section 185 of the Motor Vehicles Act.

- (2).The respondents shall make available the sufficient number of Breathalysers to the police.
- (3).The police authorities shall invoke Section 279 of the IPC for the offence of drunken driving in addition to Section 185 of Motor Vehicles Aact.
- (4).The State transport authorities shall revoke the licence under Section 19(1)(f) of the Motor Vehicles Act for drunken driving.
- (5).The State transport authorities shall invoke Rule 21(16) of the Central Motor Vehicles Rules, 1989 to disqualify the drunken drivers from holding driving licence.
- (6).The respondents shall seize/take custody of vehicles of drunk drivers as per Section 202(3) of Motor Vehicles Act.
- (7).The respondents shall constitute special committed units/wings to check drunken driving.
- (8).The respondents shall invoke Section 185 of the Motor Vehicles Act along with other IPC offences in cases of accidents involving drunken driving.
- (9).The Central Government shall consider the suggestion to direct the automobile manufacturers to install "**Alcohol Sensing Ignition Interlocking Devices**".
- (10).The respondents shall conduct mass media campaign against drunken driving regularly roping in celebrities like political leaders, cine stars, sports persons etc., including sensitisation of people, especially college students through short films, dramas and pamphlets about the dangerous consequences of drunken driving.

61.This Court directs the respondents to implement the appropriate legal provisions regarding drunken driving only in order to prevent the same. The police should not take advantage of the directions given and harass motorists for this unjust enrichment.

62.The drunken driving not only endangers lives of drunken drivers themselves but also threatens the safety and security of innocent pedestrians and other riders and travellers of other vehicles. Though it may appear that the remedial directions issued by this Court are very harsh, severe, disproportionate and excessive, it is the need of the hour to implement all available provisions in law to curtail the avoidable dangerous menace.

63.The respondents shall file a report giving the details of number of cases filed for drunken driving and number of persons arrested every calendar month in the first week of succeeding month.

64.Though the relief sought for by the appellant is granted by enhancing the compensation from Rs.4,37,920/- to Rs.67,35,000/- along with interest at the rate of 7.5% per annum, the appeal is kept pending for giving further directions.

Call the matter for filing first compliance report on 06.04.2020.

