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APHC010515702012



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3520]

FRIDAY, THE TENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT**THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA****MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 69/2012****Between:**

1. T. KRISHNAMMA & 7 OTHERS, W/O M.SUBRAMANYAM CULTIVATION R/O MADANAPALLI ROAD, PALAMANER CHITTOOR DISTRICT.
2. T. MARIAMMA, W/O LATE BHASKAR CULTIVATION R/O VEDURUKUPPAM VILLAGE & MANDAL, CHITTOOR DISTRICT.
3. MINOR ANIL KUMAR, S/O LATE BHASKAR REP. BY HIS MOTHER AND NATURAL GUARDIAN, MARIAMMA R/O VEDURUKUPPAM VILLAGE & MANDAL, CHITTOOR DISTRICT.
4. MINOR T. VAMSI, S/O LATE BHASKAR REP. BY HIS MOTHER AND NATURAL GUARDIAN, MARIAMMA R/O VEDURUKUPPAM VILLAGE & MANDAL, CHITTOOR DISTRICT.
5. VASANTHA, W/O LATE T. GANGADHARAM CULTIVATION R/O DEVARAGUDIPALLI VILLAGE, VEDURUKUPPAM MANDAL, CHITTOOR DISTRICT.
6. T. CHIRANJEEVI, S/O LATE T. GANGADHARAM CULTIVATION R/O DEVARAGUDIPALLI VILLAGE, VEDURUKUPPAM MANDAL, CHITTOOR DISTRICT.
7. T. RAJA, S/O LATE T. GANGADHARAM CULTIVATION R/O DEVARAGUDIPALLI VILLAGE, VEDURUKUPPAM MANDAL,

CHITTOOR DISTRICT.

8.MUTHYALAMMA, W/O VENKATARAMANA CULTIVATION R/O MOGHILI VILLAGE, BANGARUPALEM MANDAL, CHITTOOR DISTRICT.

...APPELLANT(S)

AND

1.A SRINIVASULU 2 OTHERS, S/O A. KRISHNAIAH OWNER OF THE VEHICLE R/O D.NO. 22-978, RAMNAGAR COLONY, CHITTOOR CHITTOOR DISTRICT.

2.M/S NATIONAL INSURANCE COMPANY LTD, REP. BY ITS BRANCH MANAGER, BRANCH OFFICE P V N COMPLEX, SESHAPPEERAN STREET, CHITTOOR, CHITTOOR DISTRICT.

3.THE DEPOT MANAGER, APSRTC, BUS BEARING NO. AP 09/Z-7964 CHITTOOR, CHITTOOR DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to against the decree and award dt. 13-9-2011 made in MVOP No. 7 of 2007 on the file of the Court of the VIII Addl. District Judge (FTC) Cum-Chairman, Motor Accidents Claims Tribunal, Chittoor.

Counsel for the Appellant(S):

1.S V MUNI REDDY

Counsel for the Respondent(S):

1.N MOHAN KRISHNA

2.ARAVALA RAMA RAO(SC FOR APSRTC KKAC)

3..

4.T S RAYALU

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**M.A.C.M.A.No.69 of 2012****JUDGMENT:****Introductory:**

1. Claimants in M.V.O.P.No.7 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (FTC), Chittoor (for short "the learned MACT"), feeling aggrieved by the dismissal of their petition filed under Section 166 (1)(c) of the Motor Vehicles Act, 1988, filed the present appeal invoking Section 173 of the Motor Vehicles Act.

2. Claim was made for awarding a compensation of Rs.2,50,000/- for the death of one Eswamma (hereinafter referred to as "the deceased") in a road traffic accident caused by the driver of the tipper lorry bearing No.AP 03 T 3744 (hereinafter referred to as "the offending vehicle"), owned by respondent no.1 and insured with respondent No.2, while the deceased was travelling in A.P.S.R.T.C. bus bearing No.AP 09 Z 7964 belonging to Respondent Nos.3 and 4, before the learned MACT.

3. Claimant No.1 is the daughter and claimant No.2 is the daughter-in-law; claimant Nos.3 and 4 are the grand children, claimant No.5 is the daughter-in-law; claimant Nos.6 to 8 are the grand children of the deceased. Husband of claimant No.2 and father of claimant Nos.3 and 4, one Bhaskar, is the son of the deceased, as he died, claimant Nos.2 to 4 are the dependents of the deceased,

claimant No.5 is the daughter-in-law and claimant Nos.6 to 8 are the children of one T. Gangadharam, son of the deceased. Contending that all the claimants are dependents on deceased and her legal heirs, they claimed a compensation of Rs.2,50,000/- .

4. For the sake of convenience, the parties will be hereinafter referred to as “the claimants” and “the respondents” as and how they are arrayed before the learned MACT.

Case of the claimants:

5. Deceased was aged 55 years, selling milk, attending agricultural work and she was earning Rs.3,000/- per month. On the fateful day i.e.12.09.2002 at about 06:15 p.m., she boarded A.P.S.R.T.C. bus bearing No.AP 09 Z 7964 to go to Ponnai to attend a function. When the bus was near M.M.N. Nursery Garden on Chittoor-Puttur Road, the offending vehicle came in the opposite direction in a rash and negligent manner and dashed the A.P.S.R.T.C. bus, causing accident, which resulted in serious injuries to the deceased. She was shifted to Government Head Quarters hospital, Chittoor, where she was treated as an inpatient for three days. Thereafter, she was admitted in Bindu Nursing Home, Chittoor as an inpatient. Again, she was admitted as an inpatient for four or five days in Government Head Quarters Hospital, Chittoor and she died on 31.01.2003.

6. A case in Crime No.111 of 2002 was registered, which was ultimately ended in conviction *vide* C.C.No.58 of 2003. On admission of guilt, the driver of the offending vehicle as convicted under Section 252 Cr.P.C and sentenced to pay a fine of Rs.1,000/- (IDSI) for two months for the offence under Section 338 IPC, to pay a fine of Rs.500/- (IDSI) for one month for the offence under Section 337 IPC and also to pay a fine of Rs.1,000/- (IDSI) for one month for the offence under Section 279 IPC.

7. Respondent No.1, being the owner and respondent No.2, being the insurer of the offending vehicle, are liable to pay the compensation. Though there is no negligence on the part of the driver of the A.P.S.R.T.C., respondent Nos.3 and 4 are also liable as the accident occurred due to collision.

Case of respondents:

8. Respondent No.1 remained *ex parte* before the learned MACT.

Case of respondent No.2:

9. There was no negligence on the part of the driving of the driver of the offending vehicle. The driver of the bus did not follow the traffic rules. Age, occupation, income of the deceased shall be proved. Further, the driving licence particulars of the driver of the offending vehicle and the insurance details shall be properly shown. The death of the deceased due to the accident and dependency of the claimants have no basis. The medical expenditure incurred for the treatment of the deceased shall be proved.

Case of respondent Nos.3 and 4:

10. The accident occurred due to negligent driving of driver of the lorry / the offending vehicle. The death of the deceased due to the accident shall be proved. The wound certificate shows that the injuries are simple, hence they do not lead to death. The claimants, since residing separately, cannot be considered as dependents. Age, occupation and income of the deceased claimed by the petitioners are baseless.

Evidence:

11. Claimant No.5 was examined as P.W.1. She has spoken about the relationship of the claimants with the deceased and the death of deceased due to the accident, as well as the age, occupation and income of the deceased. The deceased was working as a coolie and earning Rs.40/- per day by selling milk.

12. One Y. Nagabhooshanamma, an eye witness to the accident, was examined as P.W.2. She travelled along with the deceased in the bus. She also sustained injuries in the accident. She is clear, even during cross-examination, that the driver of the offending vehicle is responsible for the accident.

13. P.W.3 / Y. Chandraiah, who got acquaintance with the deceased, stated the income of the deceased as Rs.3,000/- per month. He has asserted during cross-examination that he is a neighbour.

14. P.W.4 / Dr. D. Mohan Reddy deposed that he can identify the signatures as per the record and that one Dr. B. Venkataswamy examined the deceased aged '60' years and found swelling of lower end of left humerus, suspected fracture. He has asserted that he has worked along with Dr. B. Venkataswamy.

15(i). P.W.5 / Dr.B. Venkataswamy deposed that he has examined the deceased aged about 60 years and found the following injuries:

- 1) Swelling of lower end of left humerus? # humerus
- 2) A lacerated injury 5 C.M. x 1 C.M x bone deep on right frontal region.

(ii). He has further stated that he referred the deceased to a Radiologist and X-rays are taken which are shown as follows:

- 1) X-Ray No:3970/12-09-2002 shows fracture of lower end of left humerus.
- 2) X-Ray skull shows no boney injuries.

(iii). As per his opinion, injury No.1 is grievous in nature and injury No.2 is simple in nature. Both the injuries might have been caused due to a road traffic accident. He has also clearly asserted that injury No.1 is grievous and that due to fat embolism it may cause death.

(iv). During cross-examination, nothing is elicited to doubt the injury leading to the death of the deceased, though P.W.5 was clear and specific that the injury may lead to death.

16(i). P.W.6 / Medical Superintendent, District Head Quarters Hospital, Chittoor, deposed that there was a second-time admission of the deceased in the hospital due to accident injuries. He has referred that there was a cerebrovascular accident (CVA), which means blockage of blood vessels in the brain due to thrombus or embolus. Thrombus means clotting of blood at a local area of the blood vessel and embolus means blood clotting from a peripheral region to the brain.

(ii). CVA can occur in any elderly person; it cannot be related to any accident and may be a normal phenomenon. When a cerebral vessel ruptures, it results in cerebral canal haemorrhage and may lead to death of a person.

17(i). R.W.1 is the driver of the offending vehicle. He has stated that when the bus tried to overtake a tractor, the bus dashed the tripper lorry / the offending vehicle, attributed negligence to the driver of the bus. He has claimed that the criminal case ended in acquittal, whereas he has admitted during cross-examination that he admitted the guilt and paid the fine on conviction.

(ii). He went to the extent of stating that no case was registered against him. What he stated appears to have been said in disguise.

Findings of the learned MACT:

On negligence:

18. In view of the evidence of P.W.1 and P.W.2 and Ex.A1 to A3, the negligence on the part of the driver of the offending vehicle is accepted.

On entitlement and liability:

19. The death of the deceased is on 31.01.2003 at Devaragudipalle Village, but not while undergoing treatment. The deceased was treated twice as an inpatient and was discharged and the death is 3½ months after the accident. Therefore, the death is natural but not due to accident injuries. There is no dependency for the claimants. Therefore, the claimants are not entitled for any compensation and the petition is liable to be dismissed.

20. Heard both sides extensively. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

21. Claimants / appellants disputed the dismissal as not correct and respondents argued that dismissal of claim is justified.

22. Points that arise for determination in this appeal are:

1) Whether the dismissal of the claim petition by the learned MACT under the impugned judgment dated 13.09.2011 is proper and whether the petitioners are not entitled for any compensation? If so against whom?

2) What is the result of the appeal?

Point No.1:

Negligence:

23. In a case between ***Smt. Sukhinder Anand vs. Khaza Vazir Ali (Minor) and Others¹***, this Court observed that when the driver of the offending vehicle

¹ 1994 SCC OnLine AP 20: AIR 1994 AP 343

pleaded guilty before the Court, there is no necessity of adducing the evidence about the proof of negligence of the driver of the offending vehicle.

24. It is clear from the evidence, particularly the judgment in C.C. No.58 of 2003 on the file of the V Additional Judicial Magistrate of First Class, Chittoor, covered by Ex.A3, with reference to the charge sheet covered by Ex.A2, that the accused was convicted and sentenced to pay fine. No further discussion or evidence is necessary in view of the admission and conviction. Hence, negligence stands accepted.

Locus standi of legal heirs-dependants:

Jurisprudence:

25. The legal position regarding *locus standi* of a person to make a claim for compensation in terms of the Motor Vehicles Act, in the event of death of a person, was addressed by the Hon'ble Apex Court in ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another***². The interpretation of expression "legal representative" with reference to the Fatal Accidents Act and the Motor Vehicles Act was considered by the Hon'ble Apex Court and the observations in paragraph Nos.10 to 13 of the judgment are relevant. They are as follows:

10. Amongst the High Courts in India there is a cleavage in the opinion as regards the maintainability of action under S.110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on

² 1987 Supreme (SC) 522; 1987 ACJ 561; 1987 3 SCC 234

account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra). The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Ss. 1-A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, parent or child would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are P. B. Kader v. Thatchamma, AIR 1970 Ker 241 and Dewan Hari Chand v. Municipal Corpn. of Delhi, AIR 1973 Delhi 67. The second group of cases are those referred to in Para 6 of the decision of the Gujarat High court. They are Perumal v. Ellusamy Reddiar, 1974 Acc CJ 482 (Mad) and the Vanguard Insurance Co. Ltd. v. Hanumantha Rao, 1975 Acc CJ -344 (Andh Pra). These cases lay down that while the compensation payable under S.1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein the compensation payable under S. 2 thereof may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in para 7 of the judgment of the Gujarat High Court. They are Mohmammed Habibullah v. K. Seethammal, AIR 1967 Mad 123; Veena Kumari Kohli v. Punjab Roadways, 1967 Acc CJ 297 (Punj) and Smt. Ishwari Devi Malik v. Union of India, AIR 1969 Delhi 183 which take the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Ss. 110 to 110-F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi, J. who wrote the judgment in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra) came to the conclusion that an

application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under S. 110-A of the Act.

*11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by S. 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in S. 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by S. 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under S. 110-A of the Act have to be done in accordance with wellknown principles of law. We should remember that in an Indian family brothers, sisters and brothers children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in *Meghibhai Khimji Vira. v. Chaturbhai Taljabhai*, (AIR 1977 Guj 195) (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under S. 110-A of the Act if he is a legal representative of the deceased.*

12. We have carefully gone through the decision of the High Court of Madhya Pradesh in Budha v. Union of India, (AIR 1981 Madh Pra 151) (supra). We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which Ss. 110-A and 110-B of the Act were enacted. We overrule the said decision.

13. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend S. 110-A of the Act by defining the expression legal representatives in relation to claims under Chapter VIII of the Act as the spouse, parent and children of the deceased as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression legal representative the same meaning as had been given to the expression representative for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression legal representatives in S. 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression legal representative in S. 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

26. It is relevant to note that a claim made even by a nephew of the deceased was found maintainable by the Gujarat High Court and the same was found in consonance with the principles. However, the test of dependency shall be kept in view.

27. In ***Montford brothers of St. Gabriel and Another vs. United India Insurance & Another***³, the Hon'ble Apex Court examined the maintainability of a claim made by a charitable society to which the deceased was a member and serving by dedicating all his service. In that context, the interpretation of the word/term "legal representative" as to whether it includes even "intermeddlers" etc. was considered by the Hon'ble Apex Court. As per the factual matrix of the said case, when a member in complete dedicated service of the organization died and when the society made a claim and the claim was allowed by the Tribunal, the award was questioned by way of a writ petition, which was allowed considering the scope of the Fatal Accidents Act and the term "legal representative" etc. The Hon'ble Apex Court found that the claim is tenable and that the Insurance Company is liable.

28. Further, the Hon'ble High Court of Andhra Pradesh in ***Dr. Gangaraju Sowmini and Another vs. Alavala Sudhakar Reddy and another***⁴, examined the sustainability of the claim made by a sister for the death of her brother. The objection of the Insurance company was that she is not dependent of the deceased was discarded. The Court examined the point as to whether non-dependent heir of the deceased who died in a motor accident, is entitled to lay claim for compensation under Section 166 of the Motor Vehicle Act, 1988, where there is no other dependent legal heir claiming compensation. It was situation of

³ 2014 Supreme (SC) 58; 2014 1 ACC 461; 2014 4 SCC (Cri) 628

⁴ 2016 Supreme (AP) 95; 2016 3 ACC 208

conflicting judgments and a reference was made to a Full Bench, The Full Bench has considered the case with reference to Motor Vehicles Act, 1988, the Motor Vehicles Act, 1939 and other related provisions including Section 163-A of the Motor Vehicles Act. In the said judgment, reference was made to various judgments, including ***Montford brothers of St. Gabriel and Another vs. United India Insurance & Another*** (3 supra) and ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another*** (2 supra) and also the Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, for interpretation of the word "legal representative" with reference to Section 2(11) of the Code of Civil Procedure, 1908. The observations made in para 16 of the judgment as to the interpretation of the word/term "legal representative" and who can make a claim are found relevant in the present case, which are as follows:

16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though 'legal representative' is not defined under the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, it is clear that the definition of 'legal representative' is given same meaning as defined under Section 2(11) of the Code of Civil Procedure. In view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case (9 supra), it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by

itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case (9 supra), wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can lay a claim by filing application under Section 166 of the Act. It is also to be noticed that the situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in the judgment of Hon'ble Supreme Court in Montford Brothers' case (5 supra), it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very object and intentment of the Act. Any such measure would be wholly un-equitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, we are of the view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act.

29. Claimant No.1 is the daughter of the deceased. Two sons of the deceased appear to have died and the widow of two sons and the children of the said two sons are the claimants. Therefore, their legal heir status and dependency are

obvious in the context of the sons predeceased the deceased and there is a clear assertion that claimants are depending on the deceased. Therefore, their entitlement for compensation need not be doubted In the light of the observations in the judgments cited above. Therefore, the claimants are entitled for compensation.

Death of deceased due to accident:

30. Date of accident is 12.09.2002. Death of deceased is 31.01.2003. The time gap between the death and the accident is 3½ months. In the interregnum period, admittedly, there was admission and discharge of the deceased from the hospital. Absence of post-mortem by itself cannot straightway lead to an inference that the death is not due to accident injuries. Disposal of the criminal case before the concerned Judicial First Class Magistrate on admission was done for the offences for which the accused was charge-sheeted by the date of such judgment and admission.

31. Now, the crucial point requiring appreciation is whether the death of the deceased is relatable to the accident. In this context, this Court finds it proper to note the evidence of Dr. B. Vekataswamy, who treated the deceased. As per the treatment done by Dr. B. Venkataswamy to the deceased, it is spoken to by Dr. D. Mohan Reddy, P.W.4. There is no much gap between the accident injuries and the death.

32. P.W.5 / Dr. B. Venkataswamy stated that injury No.1 i.e. swelling of the lower end of the left humerus, is grievous and due to fat embolism, it may cause death. Thrombus, i.e. clotting of blood in a local area of a blood vessel, may also be occasioned due to the age factor of an elderly person; this does not by itself make out that death cannot be related to the accident injuries. To the extent of injuries sustained/stated by the deceased, treatment undergone, expenditure incurred, attendant charges, transportation expenditure etc. are also factors to be taken note of, but unfortunately, the learned MACT has discarded the entire claim without any empathetical concern in respect of the claim made by the poor victims, forgetting the social welfare nature of the legislation. Empathetical concern on the part of the stakeholders in administration including the Tribunal is necessary, in respect of social welfare legislations and holistic approach towards the cases necessary, which, in fact, has been advised by the Hon'ble Supreme Court while examining motor accident claims.

33. In ***Rajkumar Vs. Ajay Kumar and Another***⁵, the Hon'ble Apex Court summarized principles to be followed in the process of quantifying the compensation after referring to socio economic and practical aspects from which, the claimants come and the practical difficulties, the parties may face in the process of getting disability assessed and getting all certificates from either the

⁵ 2011 (1) SCC 343

Doctors, who treated, or from the medical boards etc. principles summarized *vide* para No.19 are as follows:

19. *We may now summarise the principles discussed above:*

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

34. A poor labourer (women) travelling in a bus, meet with an accident, undergone treatment for two times by admission into hospital, ultimately the episode ended in her death. If this leaves the dependents or legal heirs without any remedy for the mishap, it is a case of failure of justice. The best evidence possible with the parties has been placed by the claimants. Upon examining the time gap, continuity of treatment and the evidence of P.Ws.4 to 6, the doctors, it

can be concluded that the death can be related to the accident injuries, particularly in the context of the age of the deceased being '60' years as per the evidence and wound certificate.

35. Parameters on which the compensation can be quantified in death cases are addressed by the Hon'ble Apex Court in the following case:

Quantum of compensation:

Precedential guidance:

36(i). For having uniformity of practice and consistency in awarding just compensation, the Hon'ble Apex Court provided guidelines as to adoption of multiplier depending on the age of the deceased in ***Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.***⁶ and also the method of calculation as to ascertaining multiplicand, applying multiplier and calculating the compensation *vide* paragraph Nos.18 and 19 of the Judgment.

(ii). Further, the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Others***⁷ case directed for adding future prospects at 50% in respect of permanent employment where the deceased is below 40 years, 30% where deceased is between 40-50 years and 15% where the deceased is between 50-60 years. Further, in respect of self-employed etc., recommended addition of income at 40% for the deceased below 40 years, at 25% where the

⁶ 2009 (6) SCC 121

⁷ 2017(16) SCC 680

deceased is between 40-50 years and at 10% where the deceased is between 50-60 years. Further, awarding compensation under conventional heads like loss of estate, loss of consortium and funeral expenditure at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is also provided in the same Judgment.

(iii). Further in ***Magma General Insurance Company Ltd. vs. Nanu Ram and Others***⁸, the Hon'ble Apex Court observed that the compensation under the head of loss of consortium can be awarded not only to the spouse but also to the children and parents of the deceased under the heads of parental consortium and filial consortium.

Just Compensation:

37. In ***Rajesh and others vs. Rajbir Singh and others***⁹, the Hon'ble Supreme Court in para Nos.10 and 11 made relevant observations, they are as follows:

10. Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa case [Nagappa v. Gurudayal Singh, (2003) 2 SCC 274 : 2003 SCC (Cri) 523 : AIR 2003 SC 674] , it was held as follows: (SCC p. 280)

“10. Thereafter, Section 168 empowers the Claims Tribunal to ‘make an award determining the amount of compensation which appears to it to be just’. Therefore, the only requirement for determining the

⁸ (2018) 18 SCC 130

⁹ (2013) 9 SCC 54

compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

The principle was followed in the later decisions in Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] and in Ningamma v. United India Insurance Co. Ltd. [(2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]

11. Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

38. The deceased was aged about '60' years. She was working as a labourer and also vending milk as per P.W.3. Her income was claimed at Rs.100/- per day and Rs.3,000/- per month. Upon considering the socio-economic circumstances of the year 2001, the income claimed is found reasonable and in view of the age, adding future prospects does not arise. The annual income comes to Rs.36,000/-. $\frac{1}{3}^{\text{rd}}$ of the income can be deducted towards personal expenditure. Upon considering the nature and extent of dependency of the claimants, the contribution of the deceased to the claimants can be considered as Rs.24,000/- per annum, which can be considered as the multiplicand. For the age group of '60' years, the applicable multiplier is '9'. When the same is applied, the

entitlement of the claimants under the head of loss of dependency comes to Rs.2,16,000/- (Rs.24,000/- x 9).

39. Claimant No.1, being the daughter, is entitled for parental consortium. The other claimants are not directly related to consider their entitlement under the head of loss of consortium. All the claimants together are entitled for funeral expenditure of Rs.15,000/- and loss of estate of Rs.15,000/- in terms of the observations of the Hon'ble Apex Court and towards medical expenditure at Rs.25,000/-.

40. In view of the reasons and evidence referred above, the entitlement of the claimants for reasonable compensation, in comparison to the compensation awarded by the learned MACT, is found as follows:

Head		Fixed by this Court
(i)	Loss of dependency	Rs.2,16,000/-
(ii)	Loss of estate	Rs.15,000/-
(iii)	Loss of Consortium	Rs.40,000/- @ claimant No.1
(iv)	Funeral expenses	Rs.15,000/-
(v)	Medical expenditure	Rs.25,000/-
	Total compensation awarded	Rs.3,11,000/-
	Interest (per annum)	6%

41. For the reasons aforesaid and in view of the discussion made above, the order and decree dated 13.09.2011 passed by the learned MACT in M.V.O.P.No.7 of 2007 found not sustainable on law or facts. Accordingly, the

same is set-aside and the claimants are entitled for compensation of Rs.2,86,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Point framed is answered accordingly.

Granting of more compensation than what claimed, if the claimants are otherwise entitled:-

42. The legal position with regard to awarding more compensation than what claimed has been considered and settled by the Hon'ble Supreme Court holding that there is no bar for awarding more compensation than what is claimed. For the said proposition of law, this Court finds it proper to refer the following observations of the Hon'ble Supreme Court made in:

(1) **Nagappa vs. Gurudayal Singh and Others**¹⁰, at para 21 of the judgment, that –

“..there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award “just” compensation, which is reasonable on the basis of evidence produced on record.”

(2) **Kajal vs. Jagadish Chand and Ors.**¹¹ at para 33 of the judgment, as follows:-

“33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case,

¹⁰ (2003) 2 SCC 274

¹¹ 2020 (04) SCC 413

the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.”

(3) **Ramla and Others vs. National Insurance Company Limited and Others**¹² at para 5 of the judgment, as follows:-

“5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation”. The Motor Vehicles Act is a beneficial and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation.”

Point No.2:

43. In the result, the appeal is allowed.

(1) The order and decree dated 13.09.2011 passed by the learned MACT in M.V.O.P.No.7 of 2007 dismissing the petition are set-aside, and the M.V.O.P.No.7 of 2007 is allowed as follows:

- (i) The claimants are entitled for a compensation of Rs.3,11,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

¹² (2019) 2 SCC 192

- (ii) The claimants are liable to pay the Court fee for the enhanced part of the compensation before the learned MACT.
- (iii) Respondent Nos.1 and 2 before the learned MACT are liable to pay the compensation.
- (iv) **Apportionment:**
 - (a) Claimant No.1, daughter of the deceased, is entitled for Rs.1,11,000/- with proportionate interest and costs.
 - (b) Claimant Nos.2 to 4, daughter-in-law and grandchildren of the deceased, are entitled for Rs.30,000/- each with proportionate interest.
 - (c) Claimant Nos.5 and 8, daughter-in-law and granddaughter of the deceased, are entitled for Rs.30,000/- each with proportionate interest.
 - (d) Claimant Nos.6 and 7, grandsons of the deceased, are entitled for Rs.25,000/- each with proportionate interest.
- (v) The time for payment /deposit of the amount is two months.
 - (a) If the claimants furnish the bank account number within 15 days from today, respondent Nos.1 and 2 shall deposit the amount directly into the bank account of the claimants and file necessary proof before the learned MACT.

(b) If the claimants fail to comply with clause (v)(a) above, the respondents shall deposit the amount before the learned MACT and the claimants are entitled to withdraw the amount at once on deposit.

(2) There shall be no order as to costs, in the appeal.

44. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date:10.04.2026
Knr

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.69 of 2012

10.04.2026

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