

**HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No. 134 of 2006

JUDGMENT:

The instant appeal is preferred by the petitioners, having got dissatisfied with the award of Rs.6,59,880/- as compensation by the order dated 22.11.2004 in M.O.P. No.443 of 2002 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-III Additional District Judge, Visakhapatnam (for short 'the Tribunal') as against the claim of Rs.13,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P.Motor Vehicles Rules, for the death of husband of petitioner No.1, the father of petitioner Nos.2 and 3, seeking enhancement of compensation.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2 herein, who are the owner and insurer of the bus bearing registration No.ATK 9222 respectively, are respondents in the original petition before the Tribunal.

3. For the sake of convenience, parties are hereinafter referred to as they were arrayed in the O.P before the Tribunal.

4. The facts, in brief, are that on 08.10.2001, one Siraparapu Demudu, belonging to Mallunaidupalem village, Sabbavaram Mandal, Visakhapatnam started from his village on his scooter bearing registration No.AP 31 R 9306 to attend his duties as Mazdoor in L.G.Polymers India Limited at R.R.Venkatapuram near Gopalapatnam, and when he reached near Mogalupuram village at about 3.30 P.M., a bus bearing registration No.ATK 9222, owned by respondent No.1, driven by one Sabbavarapu Suribabu in a

rash and negligent manner came in opposite direction and dashed the scooter, due to which he sustained head injury and died instantly. The Station House Officer, Sabbavaram Police Station registered

a case in Cr. No.86 of 2001 under Section 304-A of the Indian Penal Code against the said Sabbavarapu Suribabu. The petitioners, who are the wife and children of deceased, claiming that the deceased was 32 years old on the date of accident and was earning Rs.8,000/- per month as an employee of L.G. Polymers India Limited, Visakhapatnam and also contending that he was left with 26 years of service and would have retired as an Officer with

a salary of Rs.20,000/-, sought Rs.13,00,000/- as compensation from the respondents 1 and 2, who are the owner of the bus and the insurance company respectively.

5. Respondent No.1, who is the owner of the bus, remained *ex parte* before the Tribunal. Respondent No.2-insurance company has opposed the claim requiring the petitioners to prove the material allegations mentioned in the claim petition besides raising various pleas, and finally sought to dismiss the claim.

6. Based on the pleadings, the Tribunal framed the following issues about the responsibility for the accident:

“(1) Whether S.Demudu died on account of the rash and negligent driving of the bus bearing Regn. No.ATK 9222 by its driver?

(2) Whether the petitioners are entitled to compensation and if so to what amount and from which of the respondents?

(3) To what relief?”

7. During enquiry before the Tribunal, petitioner No.1 examined herself as P.W.1 besides examining one G.Chinni Demudu as P.W.2, eye witness to the accident, and Sri G.Rangaram, Deputy Manager (H.R & Legal), L.G.Polymers Limited, Visakhapatnam, as P.W.3 to prove the salary the deceased was drawing at the relevant time, and marked Exs.A.1 to A.6 besides marking Exs.X.1 and X.2 through P.W.3 on behalf of the management of L.G. Polymers Limited. On behalf of respondent No.2-insurance company, none were examined and no documents were filed.

8. The Tribunal, on appraisal of evidence of P.W.2 supported by Exs.A.1 to A.3, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal considering the evidence of P.W.3 and the salary particulars as in Ex.A.4, pay slip for the month of May 2001, and Ex.X.2 relating to the month of September 2001, taken the net salary of the deceased at Rs.4,580/- per month, arrived at Rs.54,960/- per annum, deducted 1/3rd there from towards personal expenses of the deceased, and the remainder of Rs.36,640/- per annum was taken towards contribution to the family. Since the deceased was 32 years old, basing on the multiplier as reflected from second schedule to Section 163-A of the Motor Vehicles Act, applied multiplier '17' and arrived at Rs.6,22,880/- towards loss of dependency. This apart, the Tribunal has granted Rs.15,000/- towards loss of consortium as per the decision in **A.P.S.R.T.C v. Patan Samshed Begum and others**^[1], Rs.20,000/- towards loss of estate as per the decision in **G.Manamma v. A.P.S.R.T.C**^[2], and Rs.2,000/- towards funeral expenses as per the second schedule to Section 163-A of the Motor Vehicles Act, thus, awarded a total sum of Rs.6,59,880/-

towards compensation.

9. The aforesaid order is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that the deceased was earning gross salary of Rs.8,000/- per month and also the fact, had he survived he would have earned Rs.20,000/- per month as he was left with 26 years of service, and, thus, according to the appellants, the Tribunal did not appreciate the evidence in proper perspective. It is also stated that despite the petitioners letting in evidence through Exs.A.1 to A.6 and Exs.X.1 and X.2, no evidence was let in to rebut the contents of these documents, and, therefore, sought to consider the monthly salary of the deceased as Rs.8,000/- and grant the balance compensation.

10. Heard Sri Jayanti S.C. Sekhar, learned counsel for the appellants, and Sri Kota Subba Rao, learned counsel for respondent No.2-insurance company. Despite service of notice on respondent No.1, none appeared for respondent No.1.

11. The learned counsel for appellants submits that it is well settled that in case of death, if the compensation determined exceeds the amount claimed, there cannot be any impediment in awarding just and reasonable compensation determined by the Tribunals/Courts. The learned counsel placed reliance on the decisions in **I.Nagamani and others v. A.P. State Road Transport Corporation and others** [Civil Appeal No.9214 of 2013 (arising from S.L.P(C) No.14833/2012) dt. 17.10.2013], **Ramilaben Chinubhai Parmar & others v. National Insurance Company Limited & others**^[3], **Sanobanu Nazirbhai Mirza and others v.**

Ahmedabad Municipal Transport Service^[4] and **Rajesh and others v. Rajbir Singh and others**^[5]. It is also the submission of the learned counsel for the appellants that the law is also well settled that the petitioners/dependants are entitled to future prospects as per the decisions of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[6] and **Rajesh's** case (Supra 5). He further submits that since the deceased was 32 years old as on the date of his death in the said accident, the petitioners are entitled to the amount after excluding permissible deductions and the multiplier will be '16' as per the decision in **Sarla Verma's** case (Supra 6) and towards future prospects, it is urged to add half of the amount determined towards loss of dependency and towards conventional sum as per the decision in **Rajesh's** case (Supra 5) the petitioners are entitled to Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, and, therefore, sought to grant the said amount while determining the compensation.

12. The learned counsel for respondent No.2, *inter alia*, contends that the decisional law prior to rendering the judgment by the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & Others**^[7] was to the effect that the claimants are not entitled to more than the amount which they sought in the claim petition. The learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in **Adikanda Sethi (Dead) through Lrs. and another v. Palani Swami Saran Transports and another**^[8], **United India Insurance Company Limited v. Patricia Jean Mahajan and others**^[9].

i) The learned counsel would submit that the Hon'ble Supreme Court in **Babu Parasu Kaikadi (dead) by LRs. v. Babu (dead) through LRs.**^[10] held that the Hon'ble Supreme Court is bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act. It is his submission that the Hon'ble Supreme Court held the judgment rendered in **Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal**^[11], as *per incuriam* since the said decision was rendered having not noticed the earlier binding precedent of a coordinate Bench in **Ramachandra Keshav Adke v. Govind Joti Chavare**^[12], and having not considered the mandatory provisions as contained in Sections 15 and 29 of the Bombay Tenancy and Agricultural Lands Act, 1948. In the same context, he has also relied on the decision of the Hon'ble Supreme Court in **Vijay Narayan Thattle and others v. State of Maharashtra and others**^[13]. He has also relied on the decision in **V. Kishan Rao v. Nikhil Super Speciality Hospital and another**^[14], wherein it was held that when a judgment is rendered by ignoring the provisions of governing statute and earlier larger Bench decision on the point, such decision is rendered *per incuriam*.

ii) On judicial precedent, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in **Divisional Controller, Karnataka State Road Transport Corporation v. Mahadeva Shetty and another**^[15], wherein it was held that every passing expression of a Judge, however,

eminent, cannot be treated as an ex cathedra statement having the weight of authority, and only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. For the same proposition, he has also relied on the decision of a Division Bench of this Court in **Special Deputy Collector, Land Acquisition Unit-III, Singur Project v. N. Sangaiah and others**^[16].

iii) The learned counsel also relied on the decisions in the case of **P. Satyanarayana v. Kesari Manevva and others**^[17], where a private bus was involved in the accident, and the Insurance Company initially was liable to third party risk; and in **A.P.S.R.T.C., represented by General Manager, now redesignated as Managing Director, Musheerabad, Hyderabad v. Batchu Pydithalli & others**^[18], wherein this Court affirmed the liability of Road Transport Corporation, though, the bus was hired to RTC at the relevant time.

13. In the light of the above contentions, the points that arise for consideration are:

- (1) Whether the petitioners are entitled to enhancement of compensation?
- (2) In case, the compensation determined exceeds the claim made by the petitioners in the Original Petition, whether are they entitled to the excess amount?

14. **POINT No.1:**

There is no dispute in regard to accepting the salary particulars referred to in Ex.X.2, which the Tribunal has relied on and taken the net income of the deceased at Rs.4,580/-. The

learned counsel for respondent No.2 fairly concedes that it is not a carry home salary, which has to be taken in determining the compensation, but certain deductions have to be made, and it is according to the learned counsel that a sum of Rs.80/- shown under deductions towards Professional Tax, Rs.20/- towards Benefit Fund and Rs.881/- towards L.I.C have to be deducted in computing the annual income of the deceased. It is his submission that the petitioners have not chosen to give the relevant particulars so far as the deduction of Rs.881/- towards L.I.C is concerned as to the maturity date and the amount that would be given to the petitioners and other relevant factors. The learned counsel for the appellants has not opposed the said submission. In fact, the said three components have to be deducted from the gross salary. Thus, when the amounts of Rs.80/-, Rs.20/- and Rs.881/- are deducted, the balance works out to Rs.6,970/- per month, and per annum it works out to Rs.83,640/-. Since the petitioners are numbering '3' as dependants of the deceased, in view of decision in **Sarla Verma's** case (Supra 6), $\frac{1}{3}^{\text{rd}}$ has to be deducted towards personal expenses of the deceased, which works out to Rs.27,880/- ($83,640 \times \frac{1}{3}$). When the same is deducted, the remainder i.e., Rs.55,760/- ($83,640 - 27,880$) accounts for contribution of the deceased to his family. Since the age of the deceased was 32 years, on the date of accident, the relevant multiplier as per the said decision is '16'. When the same is applied, it works out to Rs.8,92,160/- towards loss of dependency. Towards future prospects, 50% thereof has to be taken into consideration, which works out to Rs.4,46,080/- as per the decisions in **Sarla Verma's** case (Supra 6) and **Rajesh's** case (Supra 5), and when the same is added, the total loss of dependency comes to Rs.13,38,240/-

(8,92,160+4,46,080). This apart, Rs.50,000/- is granted towards conventional sum as per the decision of the Full Bench (Three Judge Bench) of the Hon'ble Supreme Court in **Ramilaben's** case (Supra 3), since the said decision was rendered by the Hon'ble Apex Court subsequent to the decisions in **Sarla Verma's** case (Supra 6) and in **Rajesh's** case (Supra 5). Thus, the petitioners are totally entitled to Rs.13,88,240/-. The claim in the instant petition is for compensation of Rs.13,00,000/- only, but determined at Rs.13,88,240/- as just and reasonable amount as arrived at.

15. **POINT No.2:**

The learned counsel for the respondent No.2 placed reliance on the decision in **Patricia Jean Mahajan's** case (Supra 9) wherein the Hon'ble Apex Court held in the concluding portion of paragraph '38' that the claimants cannot ask for more than what was prayed for in the claim petition. To the same effect, was the decision rendered by the Hon'ble Apex Court in **Adikanda Sethi's** case (Supra 8) where the claimants though entitled to Rs.1,40,000/- towards compensation, but it was limited to Rs.1,00,000/- since the claimants made the claim for Rs.1,00,000/- as compensation.

In **Babu Parasu Kaikadi's Case** (Supra 10), the Hon'ble Supreme Court as to when rule of *per incuriam* can be applied, held in paragraph Nos.14 to 18 thus:

"14. Having given our anxious thought, we are of the opinion that for the reasons stated hereinbefore, the decision of this Court in *Dhondiram Tatoba Kadam* having not noticed the earlier binding precedent of a co-ordinate Bench and having not considered the mandatory provisions as contained in Sections 15 and 29 of the Act had been rendered *per incuriam*. It, therefore, does not constitute a binding precedent.

15. In *Halsbury's Laws of England*, 4th Edition

Volume 26 it is stated:

"A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

16. In *State of U.P. v. Synthetics and Chemicals Ltd.* this Court observed" (SCC pp.162-63, para 40)

"40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The 'quotable in law' is avoided and ignored if it is rendered, '*in ignoratium of a statute or other binding authority*'. (*Young v. Bristol Aeroplane Co. Ltd.*) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

17. In *Govt. of A.P v. B. Satyanarayana Rao* it has been held as follows: (SCC p.264, para 8)

"The rule of *per incuriam* can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

18. Furthermore, this Court, while rendering judgment in *Dhondiram Totoba Kadam* was bound by its earlier decision of a coordinate Bench in *Ramchandra Keshav Adke*. We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act.

16. However, in the case of **Rajesh** (Supra 5), the Hon'ble Supreme Court placing reliance on the earlier decisions in **Sarla Verma** (Supra 6) and **Santosh Devi v. National Insurance**

Co.Ltd.^[19], clarified that in relation to self-employed persons, or those on fixed wages, the actual income of the deceased must be enhanced for purpose of computation of compensation by 50% where his age was below 40 years; by 30% where he belonged to age group of 40 to 50 years; and by 15% where he was between age group of 50 to 60 years, and the 'actual income' would mean income after paying tax, if any, in the context of awarding future prospects, and the duty of the Tribunal/Court to award just, equitable, fair and reasonable compensation with reference to settled principles irrespective of the claims. The Hon'ble Supreme Court explained the meaning 'just compensation' observing that the Tribunal/Court should not succumb to niceties or technicalities in such matters. The relevant observations of the Hon'ble Apex Court contained in paragraphs 5, 10 to 12 and 16, are thus:

5. The expression "just compensation" has been explained in *Sarla Verma case*², holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. After surveying almost all the previous decisions, the Court almost standardised the norms for the assessment of damages in motor accident claims.

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*¹, 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 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*⁸ and in *Ningamma v. United India Insurance Co. Ltd.*⁹

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.
12. There is another reason why the court should award proper compensation irrespective of the claim and, if required, even in excess of the claim. After the amendment of the Act by Act 54 of 1994 with effect from 14-11-1994, the report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under sub-section (6) of Section 158 has to be treated as an application for compensation.
16. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

17. The Hon'ble Supreme Court also held in paragraph No.17 thus:

“17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi.....”

18. In view of the decision of the Hon'ble Apex Court in **Rajesh's** case (Supra 5), this point invariably has to be answered

in favour of the petitioners, and, thus, the petitioners are entitled to Rs.13,88,240/- though, the said amount exceeds the claim made by the petitioners for Rs.13,00,000/-. Concerning the rate of interest, the Tribunal has granted interest at 9% per annum on Rs.6,59,880/- determined towards compensation. However, the rate of interest requires reduction in view of the decision of the Hon'ble Apex Court in **Rajesh's** case (Supra 5). Therefore, to the extent of interest, interest at 9% per annum is reduced to 7.5% per annum granting the same on the total compensation of Rs.13,88,240/- from the date of petition till realization.

19. In the result, the appeal is allowed, and the award and decree dated 22.11.2004, passed by the Tribunal in M.O.P. No.443 of 2002 is modified, enhancing the compensation from Rs.6,59,880/- to Rs.13,88,240/- (Rupees Thirteen lakh eighty eight thousand two hundred and forty), with interest at the rate of 7.5% per annum from the date of petition till realization. There shall be no order as to costs. The appellants are directed to pay the Court fee on Rs.88,240/- within one month from today.

20. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **26.03.2015**
MVA

^[1] 2000 (1) ALT 117 DB

^[2] 2000 (5) ALD 479

^[3] 2014 ACJ 1430

^[4] 2013 ACJ 2733

^[5] (2013) 9 SCC 54

- [\[6\]](#) (2009) 6 Supreme Court Cases 121
- [\[7\]](#) 2003 ACJ 12 (SC)
- [\[8\]](#) 1997 ACJ 939
- [\[9\]](#) 2002 ACJ 1441 SC
- [\[10\]](#) . (2004) 1 SCC 681
- [\[11\]](#) . (1994) 3 SCC 366
- [\[12\]](#) . (1975) 1 SCC 559
- [\[13\]](#) . 2009 (6) ALD 59 (SC)
- [\[14\]](#) . 2011 ACJ 500
- [\[15\]](#) . 2003 ACJ 1775
- [\[16\]](#) . 2000 (2) ALT 519 (D.B.)
- [\[17\]](#) .2010 ACJ 285
- [\[18\]](#) . C.M.A. No.2154 of 2001, dated 18-06-2009
- [\[19\]](#) . (2012) 6 SCC 421