

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.41/2006, 2960, 3000, 3031 & 3047/2005

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AND

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CROSS OBJECTION (SR) Nos.51264, 51262, 51261 & 51263/2005

in

M.A.C.M.A. Nos. 2960, 3000, 3031 & 3047 OF 2005

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COMMON JUDGMENT:

All these appeals are preferred by Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), which figured as respondent No.1 in O.P.Nos.978, 981, 979, 982 and 980 of 2000, respectively, challenging the orders and decrees, dated

30-07-2005, in the said O.Ps., passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Mahabubnagar (for short 'the Tribunal'), granting compensation of Rs.10,70,000/-(Rupees ten lakhs and seventy thousand); Rs.98,337/-(Rupees ninety eight thousand three hundred and thirty seven); Rs.1,50,000/-(Rupees one lakh and fifty thousand); Rs.1,58,100/-(Rupees one lakh fifty eight thousand and one hundred); and Rs.1,50,000/-(Rupees one lakh and fifty thousand), respectively, as against the claims of Rs.15,00,000/-(Rupees fifteen lakhs); Rs.1,50,000/-(Rupees one lakh and fifty thousand); Rs.2,00,000/-(Rupees two lakhs); Rs.2,00,000/-(Rupees two lakhs) and Rs.2,00,000/-(Rupees two lakhs), respectively, laid by the respective petitioners under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 514 of Motor Vehicle Rules, for the deaths of M. Ram Reddy, Kum. M. Bindu and Kum.

M. Prathusha, respectively, in O.P. Nos.978 of 2000, 979 of 2000 and 980 of 2000, respectively, and for the injuries sustained by the respective petitioners in O.P. Nos.981 of 2000 and 982 of 2000, respectively.

2. On perusal of record, it clearly shows that

Smt. M. Narayanamma alias Laxmi Devi is the wife of deceased, M. Ram Reddy, while Kum. M. Jyothi, Niveditha, Kum. M. Bindu and Kum. M. Prathushya are their daughters and Mr. M. Pruthvi Kumar is their son. In the instant road accident, the death of

M. Ram Reddy and his two daughters – Kum. M. Bindu and Kum.

M. Prathusha occurred. Their son – Mr. M. Pruthvi Kumar and another daughter Kum. M. Niveditha had sustained injuries, for which, they filed O.P. Nos.981 and 982 of 2000, respectively, seeking compensation of Rs.1,50,000/- and Rs.2,00,000/-, respectively. Whereas, Smt. M. Narayanamma filed O.P. Nos.979 and 980 of 2000 seeking compensation of Rs.2,00,000/- each for the death of the daughters, Kum M. Bindu and Kum. Prathusha, respectively. O.P. No.978 of 2000 was filed by Smt.

M. Narayanamma along with her children Kum.M. Jyothi, Kum. Niveditha, Mr. Pruthvi Kumar and her mother-in-law Smt.

M. Savaramma, mother of deceased, M. Ram Reddy, seeking compensation of Rs.15,00,000/- for the death of deceased, M. Ram Reddy.

3. All the above O.Ps. were filed by the respective petitioners before the Tribunal against respondent No.1 - APSRTC being the owner of RTC Bus bearing registration No.AP 10Z 1707 and respondent Nos.2 and 3, who are owner and insurer of Car bearing registration No.CRW 5533, respectively.

4. For convenience sake, the parties are hereinafter referred to as they were arrayed in the O.Ps. before the Tribunal.

5. The facts, in brief, are that on 17-01-2000, the deceased – M. Ram Reddy, along with his wife and children, amongst whom Kum. M. Bindu and Kum. Prathusha, who were aged 10 and 16 years studying 5th and 10th classes, respectively, succumbed to injuries, while Mr. M. Pruthvi Kumar and Kum. M. Niveditha, who were aged 19 and 14 years, respectively, sustained injuries in the same accident, while they were all proceeding in a car bearing registration No.CRW 5533 from Makthal to Kurnool and when they reached K.M. No.200/2

on National Highway No.7 in the limits of Pullur village, at about 9.00 A.M., an RTC bus bearing registration No.AP 10Z 1707 belonging to the 1st respondent, driven by its driver at high speed in a rash and negligent manner came in opposite direction and dashed the car, due to which, Ram Reddy's death occurred instantly and his two daughters – Kum. M. Bindu and Kum. M. Prathusha succumbed to injuries later and another daughter Kum. M. Niveditha and son – M. Pruthvi Kumar sustained injuries. Therefore, the petitioners filed respective O.Ps. claiming compensation as mentioned in the above.

6. Respondent No.1 being the Regional Manager of APSRTC, Mahabubnagar, filed counter opposing the claim. It is stated that there was no rash and negligent driving on the part of the bus driver and, on the other hand, due to rash and negligent driving on the part of the driver of the car, the accident occurred and, therefore, the insurer of the said car is alone liable to pay compensation claimed in the petitions. Finally, contending that the claim is excessive, sought to dismiss the petitions.

7. Respondent No.2 – owner of the car, in which the deceased was traveling, filed counter opposing the claim, but however, while requesting to dismiss the petition against him, sought to make the 1st respondent liable to pay compensation.

8. Respondent No.3 – Insurer of the car also opposed the claim, contending that the 1st respondent alone is liable to pay compensation and sought to dismiss the claim, besides raising other pleas.

9. Based on the pleadings, the Tribunal framed relevant issues in each of these cases.

10. During inquiry before the Tribunal, in O.P. No.978 of 2000, on behalf of the petitioners, petitioner Nos.1 and 3 besides examining themselves as PWs.1 and 2, also examined Mr. Fayaz Hussain, an eye witness to the occurrence, as

PW.3 and marked Exs.A-1 to A-20. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B-1 to B-6 were marked.

11. In O.P. No.981 of 2000, on behalf of the petitioner, besides examining himself as PW.1, also examined the said Mr. Fayaz Hussain as PW.2 and Dr.V. Surender Babu as PW.3 and marked Exs.A-1 to A-17. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B-1 to B-6 were marked.

12. In O.P. No.979 of 2000, on behalf of the petitioner, besides examining herself as PW.1, also examined her son as PW.2 and the said Fayaz Hussain as PW.3 and marked Exs.A-1 to A-8. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B-1 to B-6 were marked.

13. In O.P. No.982 of 2000, on behalf of the petitioner, besides examining herself as PW.1, also examined the said Fayaz Hussain as PW.2 and Dr. Vidya Sagar and Dr. V. Surender Babu as PWs.3 and 4, respectively, and marked Exs.A-1 to A-15. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B-1 to B-6 were marked.

14. In O.P. No.980 of 2000, on behalf of the petitioner, besides examining herself as PW.1, also examined her son as PW.2 and the said Fayaz Hussain as PW.3 and marked Exs.A-1 to A-8. On behalf of the respondents, driver of the bus was examined as RW.1 and Exs.B-1 to B-3 were marked.

15. The Tribunal, on issue No.1 in all these matters, on appraisal of evidence on record, both, oral and documentary, found issue No.1 in favour of the petitioners and against respondent No.1 holding that due to rash and negligent driving of the RTC bus driver only, the accident has occurred.

16. The Tribunal, on issue No.2, basing on the evidence adduced by the

respective parties, granted a sum of Rs.10,70,000/- towards compensation as against the claim of Rs.15,00,000/- for the death of deceased – M. Ram Reddy; a sum of Rs.98,337/- towards compensation as against the claim of Rs.1,50,000/- for the injuries sustained by the injured son; a sum of Rs.1,50,000/- towards compensation as against the claim of Rs.2,00,000/- for the death of deceased daughter; a sum of Rs.1,58,100/- towards compensation as against the claim of Rs.2,00,000/- for the injuries sustained by the injured daughter; and a sum of Rs.1,50,000/- towards compensation as against the claim of Rs.2,00,000/- for the death of another deceased daughter in O.P. Nos.978, 981, 979, 982 and 980 of 2000, respectively, fastening liability on respondent No.1 – APSRTC only and dismissed the claim petitions against respondent Nos.2 and 3, owner and insurer of the car, respectively.

17. It is the aforementioned orders which are under challenge in these appeals preferred by the 1st respondent - APSRTC.

18. Two main grounds have been agitated by the appellant – Corporation. First ground is, that the Tribunal has not properly appreciated the documentary evidence, Exs.A-1 and A-2, and the oral evidence through the driver of RTC bus at the relevant time, examined as RW.1, and the evidence of PWs.2 and 3 in arriving at

a conclusion that the accident has occurred due to rash and negligent driving of the RTC bus driver, when PW.3 himself was responsible for the accident and PW.2 is an interested witness. Other ground relates to the quantum of compensation awarded by the Tribunal in each of these appeals.

19. At the outset, it is desirable to observe that the Tribunal instead of disposing of all these five matters by a common order, since the claims arise out of one and the same accident, though, pronounced the orders on 30-07-2005, dealt with each claim petition separately, though, it was unnecessary. Therefore, all these appeals have been taken up for disposal by a common judgment.

20. In M.A.C.M.A. No.41 of 2006, the petitioners, who are wife, two daughters, son and mother of the deceased, have not chosen to file any cross-objections, but in rest of four M.A.C.M.As., cross objections are filed raising relevant grounds seeking to grant balance amount in each claim petition.

21. Heard Sri N. Vasudeva Reddy, learned Standing Counsel for appellant - APSRTC, and Sri A. Vishnu Vardhan Reddy, learned counsel for the respondents - petitioners and Sri A.V.K.S. Prasad, learned Standing Counsel for Insurance Company. The appeal against respondent No.2, owner of the car, was dismissed for default by the orders, dated 05-01-2012, in MACMA Nos.2960 and 3000 of 2005, respectively, and dated 06-01-2012, in M.A.C.M.A. Nos.3031 of 2005 and 3047 of 2005, respectively, but the same makes no difference in deciding the controversy herein.

22. The following two points would arise for consideration in the instant appeals and cross-objections.

- I. Whether the finding recorded by the Tribunal attributing rash and negligent driving to RW.1, driver of the RTC bus, is liable to be set aside?
- II. Whether the compensation awarded by the Tribunal in each of the claim petitions is just and adequate?

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POINT No.1:

23. The learned Standing Counsel for the appellant – Corporation contends that Ex.A-1, which is copy of first information report, was issued on the basis of complaint lodged by the Conductor of RTC bus and, it clearly shows that on account of rash and negligent driving of PW.3, Ambassador car driver, the

accident has occurred. It is also his submission that Ex.A-2, copy of charge sheet, clearly shows that the offences punishable under Sections 304-A and 337 IPC were alleged against PW.3 and, therefore, the Tribunal was not right in holding otherwise by recording a finding that due to rash and negligent driving of RW.1, the accident has occurred contrary to the contents of Exs.A-1 and A-2. It is also his submission that the Tribunal was not right in rejecting the evidence of RW.1 basing on a finding recorded by the Judicial Magistrate of First Class, Alampur, in the judgment rendered in C.C. No.81 of 2000 on its file, the photostat copy of which is marked as Ex.B-3. Therefore, it is his submission that the said finding is liable to be set aside. Incidentally, the learned Standing Counsel also contends that the Tribunal at least ought to have arrived at the finding that PW.3, Ambassador Car driver, contributed to the accident and ought to have apportioned the liability between the Corporation on one hand and, the insured and insurer, on the other.

i) The learned counsel for the claim petitioners', who are shown as respondents in all these appeals, respectively, *inter alia*, contends that the finding recorded by the Tribunal attributing rash and negligent driving to RW.1 is well-reasoned and based on appreciation of evidence on record through PWs.2 and 3 and the answers given by RW.1 in his cross-examination, and does not suffer from any infirmity and, therefore, sought to uphold the said finding. He would also submit that the Tribunal granted meager compensation and the petitioners are entitled to just and adequate compensation which even exceeds the compensation they have claimed before the Tribunal on determination.

24. Perused the orders in these appeals and the evidence let in by the parties in order to substantiate the stands they have taken. The Tribunal for the reasons, firstly, that the evidence of PWs.2 and 3 and the material contents of Ex.A-1, first information report, would show that PWs.2 and 3 sustained serious injuries and the Conductor of the bus, who lodged the complaint, basing on which, Ex.A-1 – FIR was issued, was not examined as a witness and, even, Ex.A-1 contents clearly showing that PWs.2 and 3 were seriously injured, observed that there was no opportunity for PWs.2 and 3 to complain against driver of the bus belonging to the Appellant Corporation. Second, evidence of RW.1, driver of the RTC bus at the relevant time, suffers for want of

corroboration, besides his evidence when examined in the light of his statement recorded under Section 161 Cr.P.C. marked as Ex.B-1, is highly improbable and not trust-worthy and reflects that RW.1 has developed the version before the Tribunal from that of the version he has given when his statement under Section 161 Cr.P.C. was recorded. Third, none of the passengers of the bus were examined. Fourth, Conductor of the bus, who lodged the complaint, is not examined and, thus, disbelieving the evidence of RW.1 and observing that the evidence of PWs.2 and 3 appears to be reliable and trust-worthy, recorded the finding that due to rash and negligent driving of RW.1, driver of the bus, the accident has occurred.

25. When the evidence on record is evaluated, the evidence of RW.1 would show that amongst the inmates of Ambassador Car, one of them died instantly and the others including driver sustained serious injuries and their Conductor shifted them in another RTC bus to the Government Hospital, Kurnool and the Conductor has given complaint to the Police Station against the driver of the Ambassador car. His statement recorded by the police under Section 161 Cr.P.C. was confronted to him and marked as Ex.B-1. He admits, in his cross-examination, that Ex.B-1 does not contain as to his giving information with regard to lorry coming in opposite direction passing through being followed by a double bullock cart and thereafter, the Ambassador Car. That statement was confronted to him for the reason that in his chief-examination he came up with improved version in an attempt to attribute rash and negligent driving to the driver of the Ambassador car. Thus, the assertions made by him that when the bus which he was driving reached Alampur Cross-road near the Bridge at 9.00 A.M., a lorry came from opposite direction and it passed through and behind the said lorry, a double bullock cart was coming and, thereafter, the Ambassador car bearing No.5533 was found coming being driven by its driver on wrong side coming to its extreme right side and dashing their bus. He also asserts that on finding the same, he stopped the bus. When he was suggested that he stopped the bus only after the accident has taken place, he bluntly denies the said suggestion. This version spoken to by him in his chief examination does not find place in Ex.A-1, copy of FIR, or in the charge sheet contents marked as Ex.A-2. Further, the Conductor is not examined even to prove the contents of

Ex.A-1. It is no doubt true, Ex.A-1 is marked by the petitioners, but, had, RW.1 stuck to the version incorporated in Ex.A-1, his evidence would have been considered as reliable. When what was not contained in Ex.A-1 and not spoken to the Investigating Officer when his statement was recorded under Section 161 Cr.P.C. as in Ex.B-1 was asserted by him in his chief examination, certainly, it gives rise to an inescapable inference that only to screen himself from being attributed with rash and negligent driving and causing the accident, he has deliberately improved his version which is wholly untrue and incorrect. That has been the reason, the Tribunal was constrained to discard the evidence of this witness by preferring the evidence of PWs.2 and 3.

26. When the evidence of PWs.2 and 3 is evaluated, their evidence appears to be consistent and there cannot be any reason to reject their evidence, more particularly, when nothing is brought out in their cross-examination to condemn the assertions they made in their chief examination. So, the vital circumstance which clinches the issue touching the aspect as to on account of whose rash and negligent driving the accident has occurred is, whether the driver of the Ambassador Car or any of the inmates were really in a position to approach the concerned police and lodge a complaint or not. The very circumstance that three of the inmates of the Ambassador car died in the said accident and the others sustained serious injuries, would itself, shows that none of them were really able to reach the police station so as to complain against the driver of the RTC bus which, thus, paved the way for the Conductor of the bus to lodge the complaint, but not by the driver examined as RW.1 herein, who cannot be construed as

a competent witness to the occurrence unless he was examined by the Corporation to speak to that he did really witness the taking place of accident. When, thus, viewed, the evidence of Conductor is material, and since he is not examined, the principle of withholding the best evidence applies and, therefore, basing on the said presumption, the Tribunal rightly recorded the finding by observing that the evidence of PWs.2 and 3 is trust-worthy and inspires confidence, whereas the evidence of RW.1 is totally untrustworthy and RW.1 deliberately placed improvised version for obvious reasons. Therefore, the contention of the learned Standing Counsel for the Appellant - Corporation that

the Tribunal did not properly appreciate the evidence of RW.1 and Exs.A-1 and A-2 is without any merit. Consequently, the finding recorded by the Tribunal that due to rash and negligent driving of driver of the bus, the accident has occurred, does not suffer from any legal infirmity warranting interference hence, the same is confirmed.

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POINT No.2:

M.A.C.M.A. No.3047 of 2005 & CROSS OBJ.(SR) No.51263/2005:

27. It is contended by the learned Standing Counsel for the appellant – APSRTC, that the Tribunal wrongly applied multiplier ‘15’ for a minor in arriving at the income, though, the deceased was not an earning member and, therefore, sought to set aside the order and decree passed by the Tribunal.

i) The Tribunal granted Rs.1,50,000/- as compensation. Cross-objection (SR) No.51263 of 2005 is filed by the petitioner contending that the Tribunal was not right in deducting $\frac{1}{3}^{\text{rd}}$ from the notional annual income and, therefore, sought to grant the balance amount.

ii) During the course of arguments, the learned counsel for Cross-objector - petitioner contended that in case while determining the compensation, the Court arrives at a conclusion that excess amount has to be granted than the amount claimed, nothing prevents the Court in awarding such amount and, therefore, placing reliance on the decision of the Hon’ble Supreme Court in **Ranjana Prakash and others v. Divisional Manager and another**, sought to grant just

and adequate compensation.

iii) The Tribunal has taken the notional income at Rs.15,000/- and deducted $\frac{1}{3}^{\text{rd}}$ there-from and arrived at Rs.1,50,000/- by applying multiplier '15' and granted the same, as the deceased was 15 years old on the date of accident and prosecuting 10th class. When the age of deceased is taken as 16 years as per the decision in **Sarla Verma & others v. Delhi Transport Corporation and another**, multiplier '18' would be applicable and, therefore, it works out to Rs.1,80,000/-

[Rs.10,000/- x 18]. So far as funeral expenses are concerned, the Tribunal has not granted any amount and, therefore, a sum of Rs.5,000/- is granted. Thus, the petitioner, being mother of the deceased, is entitled to a total amount of Rs.1,85,000/- (Rupees one lakh and eighty five thousand) as against the compensation of Rs.1,50,000/- granted by the Tribunal with interest at 7.5% per annum thereon from the date of petition till realization. Thus, M.A.C.M.A. No.3047 of 2005 filed by the appellant deserves to be dismissed, while allowing the cross objection filed by the petitioner in part.

M.A.C.M.A. No.3000 of 2005 & CROSS OBJ.(SR) No.51262/2005:

28. It is contended by the learned Standing Counsel for the appellant – APSRTC that the Tribunal wrongly applied multiplier '15' for a minor in arriving at the income, though, the deceased was not an earning member and, therefore, sought to set aside the order and decree passed by the Tribunal.

i) Concerning the amount of Rs.1,50,000/- granted by the Tribunal towards compensation, cross-objection (SR) No.51262 of 2005 is also filed by the petitioner contending that the Tribunal was not right in deducting $\frac{1}{3}^{\text{rd}}$ from the notional annual income and, therefore, sought to grant the balance amount.

ii) The Tribunal awarded Rs.1,50,000/- as compensation taking the notional income at Rs.15,000/- by deducting 1/3rd there-from and applying multiplier '15', though, the deceased was aged 13 years, but the Tribunal basing on the Second Schedule to Section 163-A of the Act, taken the multiplier '15'. However, in **Sarla Verma's Case** (Supra 2), concerning the children below 15 years, no multiplier is provided and multiplier has been provided only for the age group of persons between 15 - 20 years and up to 65 years and above as per the table formulated by the Hon'ble Supreme Court. Therefore, except to the extent of Rs.5,000/- towards funeral expenses, the petitioner is not entitled to any additional amount. Thus, in all, the petitioner, being the mother of deceased, is entitled to a sum of Rs.1,55,000/- (Rupees one lakh and fifty five thousand) as compensation as against the amount of Rs.1,50,000/- granted by the Tribunal, with interest at 7.5% per annum thereon from the date of petition till realization. Thus, M.A.C.M.A. No.3000 of 2005 filed by the appellant deserves to be dismissed, while allowing the cross objection filed by the petitioner in part.

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M.A.C.M.A. No.3031 of 2005 & CROSS OBJ.(SR) No.51261/2005:

29. The Tribunal basing on the evidence of PWs.3 and 4, who are Medical Officers and who treated the petitioner, granted a sum of Rs.75,000/- towards multiple fractures; Rs.10,000/- towards pain and suffering; and Rs.73,100/- towards medical expenses and, thus, a total sum of Rs.1,58,100/- was granted as compensation. Cross-objection (SR) No.51261 of 2005 is filed by the petitioner contending that the Tribunal has granted meager compensation though, the petitioner sustained multiple fractures and, therefore, sought to allow the cross-objection.

i) As seen from the medical certificate and medical record through Exs.A-3 to A-11 and evidence of PWs.3 and 4, the petitioner sustained fracture of left nasal bones comminuted compound, left medial cantus was ripped off the left nasal bone, comminuted fracture of anterior of wall maxilla with loss of some

bone pieces, and left sagittal fracture with split of palate on right side and depressed fracture of left fracture bone. Therefore, the amount of Rs.75,000/- granted by the Tribunal towards these fractures, appears to be on lower side and, the same is enhanced to Rs.1,00,000/-. Towards pain and suffering, the Tribunal has granted a sum of Rs.10,000/-, the same is maintained. The Tribunal has also granted a sum of Rs.73,100/- towards medical expenses, and in view of the nature of injuries sustained by the petitioner, the same is maintained. The Tribunal has not granted any amounts towards extra nourishment and attendant charges. When kept in view, the nature of injuries and the sufferance undergone by the petitioner, a sum of Rs.10,000/- is granted towards extra nourishment, and so also Rs.7,000/- towards attendant charges and transport charges. Thus, in all, the petitioner is entitled to a sum of Rs.2,00,100/-, rounding it off to Rs.2,00,000/- (Rupees two lakhs) as compensation as against the amount of Rs.1,58,100/- granted by the Tribunal, with interest at 7.5% per annum thereon from the date of petition till realization. Thus, M.A.C.M.A. No.3031 of 2005 filed by the appellant – APSRTC deserves to be dismissed, while allowing the cross objection filed by the petitioner.

M.A.C.M.A. No.2960 of 2005 & CROSS OBJ.(SR) No.51264/2005:

30. The Tribunal basing on the evidence of PW.3, who is Medical Officer and who treated the petitioner, granted a sum of Rs.50,000/- towards fractures; Rs.10,000/- towards pain and suffering; and Rs.38,337/- towards medical expenses and, thus,

a total sum of Rs.98,337/- was granted as compensation with interest at 7.5% per annum thereon. Cross-objection (SR) No.51264 of 2005, is filed by the petitioner contending that the Tribunal has granted a meager compensation and ought to have granted entire amount, as the petitioner sustained fractures and, therefore, sought to allow the cross-objection.

i) As seen from the evidence of PW.3, Medical Officer examined on commission, and medical record Exs.A-3 to A-11, it is clear that the petitioner sustained fractures of mandible left subcondylar, parasymphyseal (right) and fracture of left nasal bone and fracture of maxilla and underwent surgical

interventions. The Tribunal has granted a sum of Rs.50,000/- towards fractures sustained by the petitioner which appears to be on a lower side and, therefore, the same is enhanced to Rs.80,000/-. The amount of Rs.10,000/- granted by the Tribunal towards pain and suffering is maintained, and so also the amount of Rs.38,337/- towards medical expenses, rounding it off to Rs.38,340/-. The Tribunal has not granted any amount towards extra nourishment and, therefore, a sum of Rs.5,000/- is granted. Towards transport charges and attendant charges, a sum of Rs.7,000/- is granted. Thus, in all, the petitioner is entitled to a sum of Rs.1,40,340/- (Rupees one lakh forty thousand three hundred and forty) as compensation as against the amount of Rs.98,337/- granted by the Tribunal, with interest at 7.5% per annum thereon from the date of petition till realization. Thus, M.A.C.M.A. No.2960 of 2005 deserves to be dismissed, while allowing the cross objection filed by the petitioner in part.

M.A.C.M.A. No.41 of 2006

31. It is contended by the learned Standing Counsel for the appellant - APSRTC that the Tribunal wrongly applied multiplier '13' taking the age of deceased as 45 years, where the annual income was more than Rs.40,000/-, though, the Second Schedule is not applicable and, therefore, sought to set aside the order and decree passed by the Tribunal.

i) Concerning the compensation of Rs.10,70,000/- granted by the Tribunal, on perusal of record, the petitioners have not chosen to file cross-objection in this appeal. But, however, during the course of arguments, the learned counsel for the petitioners, contended that in case while determining the compensation if the Court arrives at a conclusion that the petitioners are entitled to more than the amount claimed, nothing prevents the Court in awarding such amount and, therefore, placing reliance on the decision of the Hon'ble Supreme Court in **Ranjana Prakash's Case** (Supra 1), sought to grant just and adequate compensation.

ii) The Tribunal has taken the age of deceased as 45 years as per Ex.A-3 and

the income at Rs.10,000/- per month which works out to Rs.1,20,000/- per annum, and after deducting 1/3rd there-from, and contribution to the family at Rs.80,000/- per annum and by applying multiplier '13', worked out the loss of dependency at Rs.10,40,000/-, besides granting Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium and, thus, making it to Rs.10,70,000/- as compensation with interest at the rate of 7.5% per annum thereon.

iii) The learned counsel for the petitioners submits that nothing is brought out in the cross-examination of PW.1 to prove that the deceased was drawing less than the amount determined/fixed by the Tribunal. In that view of the matter, the finding recorded by the Tribunal in regard to fixation of monthly earnings and determining the compensation can not be faulted with, as no legal infirmity is to be found warranting any interference and, therefore, the order of the Tribunal granting Rs.10,70,000/- as compensation with interest at 7.5% per annum thereon, which is in accordance with the rate of interest as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** is confirmed. Thus, the appeal filed by the appellant deserves to be dismissed.

32. Accordingly, Cross-objection (SR) No.51264 filed by respondent No.1 - petitioner in M.A.C.M.A. No.2960 of 2005 is allowed in part and the order and decree, dated 30-07-2005, in O.P.No.981 of 2000, passed by Tribunal are modified enhancing the compensation to Rs.1,40,340/-(Rupees one lakh forty thousand three hundred and forty) from Rs.98,337/-(Rupees ninety eight thousand three hundred and thirty seven) with interest at the rate of 7.5% per annum from the date of petition till realization.

Cross-objection (SR) No.51262 of 2005 filed by respondent No.1 - petitioner in M.A.C.M.A. No.3000 of 2005 is allowed in part and the order and decree, dated 30-07-2005, in O.P.No.979 of 2000, passed by Tribunal are modified enhancing the compensation to Rs.1,55,000/-(Rupees one lakh and fifty five thousand) from Rs.1,50,000/-(Rupees one lakh and fifty thousand) with interest at the rate of 7.5% per annum from the date of petition till realization.

Cross-objection (SR) No.51261 of 2005 filed by respondent No.1 - petitioner in M.A.C.M.A. No.3031 of 2005 is allowed and the order and decree, dated 30-07-2005, in O.P.No.982 of 2000, passed by Tribunal are modified enhancing the compensation to Rs.2,00,000/-(Rupees two lakhs) from Rs.1,58,100/- (Rupees one lakh fifty eight thousand and one hundred) with interest at the rate of 7.5% per annum from the date of petition till realization.

Cross-objection (SR) No.51263 of 2005 filed by respondent No.1 - petitioner in M.A.C.M.A. No.3047 of 2005 is allowed in part and the order and decree, dated 30-07-2005, in O.P.No.980 of 2000, passed by Tribunal are modified enhancing the compensation to Rs.1,85,000/-(Rupees one lakh and eighty five thousand) from Rs.1,50,000/-(Rupees one lakh and fifty thousand) with interest at the rate of 7.5% per annum from the date of petition till realization.

33. In the result, all the M.A.C.M.As. are dismissed and Cross-objections are allowed to the extent indicated above. There shall be no order as to costs.

34. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

March 12, 2015

Mgr

