

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

M.A.C.M.A. No.2347 OF 2013

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JUDGMENT: (*Per Hon'ble Sri Justice M. Satyanarayana Murthy*)

Aggrieved by the Award dated 06.08.2013 passed in M.V.O.P. No.239 of 2012 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge Medak at Sangareddy (for short, 'the Tribunal'), 2nd respondent therein preferred this Appeal.

2. The appellant herein was the 2nd respondent and the 1st respondent herein was the 1st respondent and respondents 2 to 5 herein were the petitioners – claimants before the Tribunal. For convenience of reference, the ranks given to the parties in M.V.O.P. No.239 of 2012 will be adopted throughout this judgment.

3. The petitioners-claimants filed claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (For short, 'the Act of 1988'), claiming total compensation of Rs.86,00,592/-, under various heads, for the untimely death of Chittimalla Janardhan, who was husband of first petitioner and father of petitioners 2 to 4, in a road accident that occurred on 12.10.2011 at about 08:00 *p.m.* while Janardhan along with his wife, 1st petitioner, were proceeding towards L.I.G. housing complex to meet their friend on his scooter bearing registration No. AP-9F-8596 reached near Mangala function hall in Bharat Heavy Electricals Limited (B.H.E.L.) Township on the left side of the road, 2nd respondent drove Fiat Siena Car bearing registration No.AP-28-M-6600, belonging to the 1st respondent, in rash and negligent manner, hit the scooter due to which, Janardhan and the 1st petitioner fell down, sustained grievous injuries; Janardhan received head injury and became unconscious and his wife also sustained grievous injuries; immediately, Janardhan

was shifted to B.H.E.L. General Hospital on the medical advise; after first-aid, he was shifted to Apollo Hospital, Hyderguda, Basheerbagh, Hyderabad; while undergoing treatment, Janardhan succumbed to injuries on 13.10.2011 at about 12:55 hours.

4. The 3rd petitioner, son of deceased Janardhan, lodged a complaint to the Police and the same was registered as a Case in Crime No.332 of 2011 by the Station House Officer, Ramachandrapuram Police Station against the 2nd respondent for the offence punishable under Section 304-A of I.P.C. The deceased Janardhan was aged 56 years, hale and healthy at the time of accident, working as Master Technician in B.H.E.L. drawing a gross salary of Rs.1,01,103/- *p.m.* and contributing his entire earning to the welfare of the petitioners. The 1st petitioner being wife, lost her companionship and the petitioners 2 to 4 being the children lost care, love and affection besides loss of dependency on account of untimely death of their bread-winner, deceased Janardhan; the petitioners were also put to mental shock besides losing financial support, hence, claimed the above said compensation for the untimely death of Janardhan.

5. The 1st respondent being owner and the 2nd respondent being its driver are jointly and severally liable to pay compensation, hence, the claim.

6. The 1st respondent filed counter denying material allegations of the petition and as such occurrence of the accident, relationship between the petitioners and deceased Janardhan, employment and income of deceased Janardhan, so also rashness and negligence attributed to the 2nd respondent in driving the Car, while admitting registration of a case in Crime No.332 of 2011 against the 2nd respondent contending that a false case is foisted against the 2nd respondent though the Car did not involve in the accident, called upon the petitioners to put the same to strict proof. He further denied the age of the deceased, earning gross salary of Rs.1,01,103/- *p.m.* and contribution of the same to the petitioners. Finally, it is contended that the 2nd respondent was not the driver of the Car at the time of the accident, while admitting that he is the owner of the Car, but denied the death of Janardhan due to

accident and his liability to pay compensation, if any, to the petitioners and contended that the deceased Janardhan, while riding scooter in a rash and negligent manner, fell down and sustained injuries and succumbed to those injuries. Therefore, the 1st respondent is not liable to pay any compensation and prayed for dismissal of the Petition.

7. The 2nd respondent filed a memo adopting the counter filed by the 1st respondent.

8. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of the crime vehicle?
2. Whether the petitioners (*sic*) are entitled for compensation, as prayed for, if so, at what amount and from whom?
3. To what relief?

9. During course of enquiry, on behalf of the petitioners - claimants, PWs.1 to 5 were examined and Exs.A-1 to A-11 were marked. On behalf of the respondents, RWs.1 to 3 were examined and Exs.B-1 and B-2 were marked.

10. Upon hearing argument of both the counsel, the Tribunal found that the accident occurred due to rash and negligent act of the 2nd respondent, who was driving the Car at the time of accident, and awarded compensation of Rs.53,90,000/- against the claim of Rs.86,00,592/-, in favour of all the petitioners - claimants, together with interest at the rate of 8% *p.a.* from the date of petition, till the date of deposit, making the respondents 1 and 2 jointly and severally liable to pay the compensation.

11. Aggrieved by the Award passed by the Tribunal, the 2nd respondent-appellant preferred this Appeal under Section 173 of the Act on various grounds. The main contentions raised in the grounds of Appeal are only with regard to the alleged failure of the Tribunal in appreciation of evidence of the witnesses and assessment

of compensation under various heads.

12. During argument, learned counsel for the 2nd respondent-appellant contended that the Tribunal failed to appreciate the evidence of witnesses in proper perspective and the principles of evidence applicable to both civil and criminal cases are one and the same and unless the petitioners proved the occurrence of accident due to rash and negligent act of the 2nd respondent-appellant, by adducing satisfactory evidence, the Tribunal is not supposed to award huge amount of compensation making the respondents jointly and severally liable to pay the compensation. If the evidence of PWs.1 to 5 is appreciated in proper perspective, the Tribunal would have found several contradictory statements, and the witnesses were not credible due to lot of variation in their evidence regarding occurrence of accident and involvement of the Car. It is further contended that the Tribunal did not consider admission of age of the deceased Janardhan in the petition, which is the best piece of evidence and did not adopt the appropriate multiplier applicable to the age group of Janardhan, applying the principles laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*** and committed an error in assessment of compensation.

13. Similarly, the Tribunal did not fix the earnings of deceased properly, since he was earning Rs.28,500/- basic salary *p.m.* and his annual earning comes to Rs.3,42,000/-. If the basic salary as per Ex.A-8 is taken into consideration, the compensation awarded by the Tribunal is excessive and not in accordance with law. It is further contended that the scooter on which deceased Janardhan and 1st petitioner, PW.1, were travelling was not inspected by the Motor Vehicle's Inspector; moreover, the accident Car was inspected by the Motor Vehicle's Inspector long after the alleged accident and found a dent which by itself is not sufficient to conclude that the Car was involved in the accident. The initial burden is upon the petitioners to prove occurrence of accident due to rash and negligent act of the driver of the Car, thereupon the burden will shift to the respondents to rebut the same. However, in the present case, the petitioners failed to discharge their initial onus of proof to establish occurrence of accident due to rash and negligent act of the driver of the Car so also involvement of the Car, therefore, the question of rebutting the

evidence by the respondents does not arise; even otherwise, the evidence adduced by the respondents is sufficient to rebut the evidence of the petitioners and to disprove the occurrence of accident due to rash and negligent act of the 2nd respondent-appellant and involvement of the accident Car.

14. Learned counsel for the 2nd respondent-appellant further contended that the principles of Evidence Act are applicable to the claims under the Act before the Tribunal and in the absence of any rule exempting application of rules of evidence, the general rules of evidence have to be applied and the evidence is required to be appreciated by the Tribunal with reference to general principles contained in Evidence Act, but the Tribunal did not consider the same, erroneously held that the accident occurred due to rash and negligent act of the 2nd respondent-appellant and awarded huge amount of compensation in favour of the petitioners and finally prayed to *set-aside* the Award passed by the Tribunal.

15. Whereas, learned counsel for the 1st respondent before the Tribunal and this Court supported entire case of the 2nd respondent-appellant in all respects and requested this Court to remand the matter to the Tribunal since enquiry was not conducted properly by the Tribunal, while disputing the findings of the Tribunal with regard to rashness and negligence attributed to the 2nd respondent and quantum of compensation. It is further contended that, the 2nd and 4th petitioners were married and 3rd petitioner was gainfully employed, hence, not entitled to claim any compensation under the head of loss of dependency but the Tribunal failed to consider this contention in proper perspective and awarded huge amount of compensation.

16. *Per contra*, learned counsel for the petitioners-claimants, would contend that the general principles of Evidence Act have no application to the proceedings under the Motor Vehicles Act since the procedure to be followed by the Tribunal is summary in nature, according to Section 169 of the Act and, placed reliance on the judgment of

Delhi High Court in ***National Insurance Company Limited Vs. Pushpa Rana*** and relied on the judgment of the Apex Court in ***Oriental Insurance Company Limited Vs. Meena Variyal***.

17. Learned counsel for the petitioners-claimants further contended that the compensation awarded by the Tribunal is in accordance with law and even the married children, being the legal representatives of deceased Janardhan, are also entitled to claim compensation under the head of loss of dependency, placed reliance on the judgment of Delhi High Court in ***Shakuntala Vs. Naresh Kumar***.

18. The 2nd respondent-appellant filed a Petition in M.A.C.M.A. M.P No.5221 of 2013 under Order XLI Rule 27 of C.P.C. to receive documents set out in the list as additional evidence and the same is separately ordered.

19. Considering rival contentions and perusing the Award passed by the Tribunal including the material available on record, the points that arise for consideration are:

1. Whether the 2nd respondent was driver at the time of accident and drove the Car, bearing registration No.AP-28-M-6600, in rash and negligent manner causing the accidental death of Janardhan?
2. Whether all the petitioners-claimants are dependants of deceased Janardhan? If so, are they entitled to claim any amount as compensation under the head of loss of dependency?
3. Whether the petitioners-claimants are entitled to claim total compensation? If not, whether the Award passed by the Tribunal is in accordance with law?

20. **POINT No.2:** One of the major contentions raised by learned counsel for the 2nd respondent-appellant before the Tribunal and this Court is that the petitioners 2 and 4 were married; living separately and that the 3rd petitioner, Chittimalla Srinivas, is

gainfully employed, therefore, they are not dependants of deceased Janardhan, disentitled to claim any amount as compensation under the head of loss of dependency. Whereas, learned counsel for the petitioners-claimants would contend that the married children are also legal representatives and entitled to claim compensation and placed reliance on the judgment of the Delhi High Court in ***Shakuntala***⁴, wherein it was held as follows:

“4. It is well known that in Indian society married daughters are also the beneficiaries of various gifts and cash amounts from the father from time to time. The appellant No.4, who was the son of the deceased, was also unmarried and in due course of time the father would have expended some amount of money on his marriage and would have supported him in times of need. Accordingly, in my view, the deduction of one-fourth of the income of the deceased ought to have been made by the claims Tribunal while calculating the loss of dependency of the appellants.”

21. From the principles laid down by the Delhi High Court in ***Shakuntala***⁴, even the major sons and married daughters are also entitled to claim compensation. Admittedly, the 2nd petitioner, Divya, married one Bhaskar and residing at Old Kapra Municipality near E.C.I.L. post, Hyderabad, whereas the petitioners 3 and 4 were not married and 4th petitioner is only a student by the date of filing the claim petition. Even according to the grounds of Appeal, she was a student aged 21 years. Similarly, 3rd petitioner is only a private employee though major. In view of the marriage of 2nd petitioner and engagement of 3rd petitioner in gainful employment, they are not dependants and no amount of compensation can be awarded to them, according to the learned counsel for the 2nd respondent-appellant.

22. When similar question came up for consideration before the Apex Court in ***Manjuri Bera Vs. Oriental Insurance Company Limited and another***, it was held as follows:

“Judged in that back ground, where a legal representative who is not dependent files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is

no loss of dependency, the claimant if he or she is a legal representative, will be entitled to compensation, the quantum of which, shall be not less than the liability flowing from Section 140 of the Act.”

23. Similarly, in a Division Bench judgment of this Court in ***Oriental Insurance Company Limited, Guntur Vs. P. Sathyavathamma and others***, it was held as follows:

“So as to maintain a petition for compensation either under Section 163-A or 166 of the Act, a person must besides showing that he/she is legal representative of the deceased, must also demonstrate that he/she is dependent on the deceased. In such a case, mere fact that the claimants used to live under the same roof with the deceased by itself would not be sufficient. In addition, it must be proved that such persons were entirely dependents for their livelihood on the deceased. In 2009(6) SCC page 121, Supreme Court laid down that, “in the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning or married or be dependent on the father.”

24. In the earlier judgment of this Court in ***Dilip Kumar Moses Vs. V. J. Cyrice and others***, it was held as follows:

“The pecuniary loss suffered by the legal representatives as a result of the death of the deceased always depends on the actual dependency and the pecuniary benefit they were enjoying from the income of the deceased such as food, shelter, education and *etc.*, The compensation payable towards loss of dependency must be the benefit which the dependents were enjoying and are expected to enjoy in future as a result of their dependency on the deceased. Therefore, though all the legal representatives of the deceased have a *locus standi* to file a claim petition under Section 166 of the Motor Vehicles Act, 1988, in order to get the compensation towards loss of dependency, they have to further establish loss of pecuniary benefit being enjoyed by them as dependents on the deceased. Hence, when admittedly the claimant is not a dependent and is not enjoying any pecuniary benefit out of the earnings of the deceased, no compensation can be awarded under the head of loss of dependency.”

25. In view of the principles laid down by the Apex Court in ***Manjuri Bera***⁵ and this Court in ***Sathyavathamma***⁶ and ***Dilip Kumar Moses***⁷, employed sons and married

daughters are not dependants, not entitled to claim compensation under the head of loss of dependency.

26. The principle laid down by Delhi High Court in ***Shakuntala***⁴ need not be followed since it is not a binding precedent; at best, it will only have a persuasive value. Keeping in mind the principles laid down in ***Manjuri Bera***⁵, ***Sathyavathamma***⁶ and ***Dilip Kumar Moses***⁷, the dependants are only two in number, according to the material available on record, particularly, the petitioners 1 and 4 who are the wife and un-married daughter, by the date of claim.

27. According to the principles laid down by the Apex Court in ***Manjuri Bera***⁵, when the petitioners-claimants are not dependants, compensation shall not be less than payable under Section 140 alone can be awarded to the petitioners-claimants other than dependants. According to the settled law, more particularly, in view of the principles laid down by the Apex Court in ***Sarla Verma***¹, for assessment of compensation in death claims, the relevant factors are the age of the deceased, multiplier applicable to the age group of deceased, number of dependants and contribution of deceased to his family members.

28. The deceased Janardhan was aged 56 years as per the pleadings in the claim petition but as per his post-mortem certificate, approximate age of the deceased Janardhan was mentioned as 55 years but the age mentioned in the claim petition shall be taken into consideration since the age mentioned in the post-mortem report marked as Ex.A-3 need not be taken into consideration for the reason that admission is the best piece of evidence and that too the judicial admission made in the affidavit and in Para 3 of the pleadings need not be proved, in view of Section 58 of the Indian Evidence Act, 1872 and, hence, the Tribunal applied the multiplier applicable to the age group of deceased. As per the principles laid down by the Apex Court in ***Sarla Verma***¹, the appropriate multiplier applicable to the age group of deceased *i.e.*, 56 to 60 years is '9' but the Tribunal was under the impression that multiplier '9' is applicable to the age group of 55 to 60 years.

29. The deceased Janardhan was drawing salary of Rs.1,01,103/- *p.m.* as per the

evidence of PW.2 but in the cross-examination, he pleaded ignorance about the details of salary. Ex.B-2 is Form No.16 and the taxable income was shown as Rs.9,36,503/- for the assessment year 2011-12 and the taxable income for the assessment year 2012-13 as Rs.5,70,940/- in the evidence of RW.3, who is working as Deputy Manager, H.R, B.H.E.L.; according to him, the taxable income of the deceased Janardhan was Rs.9,36,503/- for the assessment year 2011-2012 and as per Ex.B-2, Form No.16 of the deceased for the assessment year 2012-2013 was Rs.5,70,940/-. As per Ex.A-8 salary slip, the salary of deceased Janardhan includes overtime allowance of Rs.33,377/- p.m. but payment of overtime allowance will depend upon the work load in the industry and there is no guarantee for continuously drawing such amount towards Overtime allowance; similarly, the salary includes Rs.1,500/- p.m. towards night snack allowance, which will be only paid whenever the deceased attends night duty. Therefore, the amount payable towards overtime allowance and night snack allowance cannot be taken into account for fixing the net income of the deceased. In the cross-examination, RW.3 admitted that as per Ex.A-8, the gross income of the deceased was Rs.1,01,103/- p.m. for the month of September, 2011 and it was issued by their Finance Department. Exs.A-8 and B-2 at best would go to show that the deceased Janardhan was receiving a basic pay of Rs.28,500/- p.m. and the total emoluments of deceased for the relevant period was Rs.1,01,103/- p.m. and the total recoveries comes to Rs.16,213/- p.m. which includes Income-tax, C.P.F. etc., Therefore, the gross salary of the deceased Janardhan was Rs.1,01,103/- p.m. and out of the said amount Income Tax of Rs.6,724/- p.m. is required to be deducted. Similarly, the Overtime allowance and night snack allowance also have to be deducted from the gross-salary of the deceased. If the amount covered by those heads is deducted from gross-salary of the deceased, the total net income of the deceased comes to Rs.59,502/- p.m.

30. In view of my foregoing discussion, the dependants of the deceased Janardhan are 2 in number and when the dependants are 2 to 3 in number, deduction towards personal and living expenses of the deceased should be $\frac{1}{3}^{\text{rd}}$ as per the guidelines laid down by the Apex Court in **Sarla Verma¹** but the Tribunal wrongly held that petitioners 1 to 4 were dependants of deceased Janardhan and deducted $\frac{1}{4}^{\text{th}}$ towards personal and living expenses instead of $\frac{1}{3}^{\text{rd}}$. When the family members of

deceased are 2 to 3 in number, $\frac{1}{3}^{\text{rd}}$ of his income has to be deducted towards personal and living expenses of the deceased Janardhan and the remaining $\frac{2}{3}^{\text{rd}}$ income shall be treated as contribution of deceased Janardhan to his family, which comes to Rs.39,668/- p.m. and when the same is multiplied with the appropriate multiplier applicable to the age group of deceased Janardhan *i.e.*, '9', compensation to be awarded under the head of loss of dependency would come to Rs.3,57,012/- p.m. and if the same is taken per annum, the same would come to Rs.42,84,144/-. But, the Tribunal wrongly assessed the compensation as Rs.53,64,702/- under the head of loss of dependency. Besides loss of dependency, the 1st petitioner being wife is entitled to compensation of Rs.1,00,000/- towards loss of consortium and petitioners 1 and 4 are entitled to an amount of Rs.25,000/- towards funeral and transportation expenses in terms of the principles laid down by the Apex Court in ***Rajesh and others Vs. Rajbir Singh and others***. Whereas, the Tribunal failed to award any amount under the head of funeral and transportation expenses, medical and attendant expenses and amount under the head of mental shock *etc.*, but the Tribunal awarded only an amount of Rs.10,000/- under the head of loss to estate to 1st petitioner. Though, an amount of Rs.5,000/- each is awarded to petitioners 2 to 4, in view of our foregoing discussion, 4th petitioner alone is entitled to an amount of Rs.5,000/- under the head of loss of love and affection. Thus, in all, the petitioners 1 and 4 are entitled to a total compensation of Rs.42,99,144/- and whereas the petitioners 2 and 3 being married daughter and employed son are not entitled to any compensation under the head of loss dependency.

31. The petitioners also claimed medical expenses and attendant expenses each at the rate of Rs.5,000/-, Rs.3,00,000/- towards mental shock and Rs.20,000/- towards funeral expenses *etc.*, but the Tribunal did not award any amount under the heads referred *supra* and the Award passed by the Tribunal was not challenged before this Court by filing Cross-objections or Cross-Appeal by the petitioners-claimants or even did not advance any argument, during hearing, challenging the adequacy of the Award of the Tribunal for its failure to award compensation towards loss of consortium exclusively to the 1st petitioner and loss of love and affection to the petitioners 2 and 3, we refrain ourselves to decide the legality of the Award to the extent challenged by the appellant-2nd respondent. Therefore, the total amount payable to the petitioners 1 and 4 by the respondents under various heads comes to

Rs.42,99,144/-. Accordingly, the point is answered in favour of the 2nd respondent-appellant and against the petitioners-claimants holding that the petitioners-claimants are entitled to an amount of Rs.42,99,144/- at the rate of 9% *p.a.* from the date of petition till the date of realization.

32. **POINT Nos.1 and 3:** The petitioners filed claim petition under Section 166 of the Act alleging that the accident occurred due to rash and negligent act of the 2nd respondent, who was driving the Car at the time of accident. Thus, the claim is for fault liability under Section 166 of the Act and thereby the petitioners are required to establish occurrence of accident due to rash and negligent act of the driver of Car at the time of accident; otherwise, the petitioners are not entitled to claim any compensation.

33. To substantiate the contentions of the petitioners, they raised a specific plea in the Petition that the accident occurred due to rash and negligent act of the appellant-2nd respondent while Janardhan was proceeding towards L.I.G riding his scooter and the 1st petitioner, PW.1, was traveling as pillion rider on the scooter, the accident Car was driven in a rash and negligent manner, hit the scooter and due to impact, Janardhan and PW.1 fell down and received grievous injuries, Janardhan was shifted to B.H.E.L. Hospital, wherefrom to Apollo Hospital, Hyderguda, Basheerbagh, where he succumbed to the injuries while undergoing treatment.

34. The 1st respondent filed counter, denying involvement of the Car in the accident, and the same was adopted by the 2nd respondent by filing a memo. It is clear from the counter filed by the 1st respondent that the respondents totally denied occurrence of accident due to hit of Car against the scooter and causing death of Janardhan. In such case, the initial onus of proof is on the petitioners-claimants to establish the occurrence of accident. No doubt, the 1st respondent is not a witness to the occurrence but, strangely, denied the total occurrence of accident.

35. To substantiate the contentions of the petitioners-claimants, they examined the

1st petitioner, Shobha, who was the pillion rider, received injuries in the same accident. According to her evidence, while Janardhan and herself were proceeding on a scooter towards L.I.G. housing complex to meet their friend, reached near Mangala function hall in B.H.E.L. township, while they were proceeding on the left side of the road, 2nd respondent drove the Car in rash and negligent manner and dashed against the scooter, due to the impact, both of them fell down and Janardhan received grave head injury, which resulted in his death while undergoing treatment in Apollo hospital. In the cross-examination, PW.1 admitted that they were proceeding towards south from north and there is a small chourasta at the place of accident near Mangala function hall in front of the main gate but pleaded ignorance whether the main gate is towards south of the road but there is parking place in front of the function hall and they did not take turn but they were proceeding on the said road without taking any turn the Car hit the scooter. The main endeavour of learned counsel for the 2nd respondent-appellant is that the Car and the scooter were not proceeding on the same road and the question of hitting the scooter by the Car does not arise. Even assuming for a moment that, the Car was proceeding on the same road and drawn the attention of this Court to the rough sketch of the scene of accident, Ex.B-1, along with observation report which was prepared on the next date of the accident and, at the same time, in the same car the injured Janardhan and PW.1 Shobha were shifted to the hospital, therefore, the question of finding the car in the scene of offence is not believable. Even otherwise, the scooter was proceeding from north to south; whereas, the car was proceeding from east to west and both the vehicles could have met at the chourasta and caused the accident; moreover, much reliance cannot be placed on the observation report of the scene of offence. Even if the rough sketch of the scene of accident is considered, due to impact of hitting, the scooter was dragged to certain extent, therefore, on the strength of Ex.B-1 also it can safely be concluded that the accident occurred due to hit of Car against the scooter which resulted in death of Janardhan while undergoing treatment in the hospital.

36. PW.1 is the injured witness, who was traveling on the scooter as a pillion rider, along with deceased Janardhan and she is the best witness to speak about the occurrence of accident and the negligence attributed to the 2nd respondent-appellant herein. Though the respondents contended that the accident occurred due to fall on the ground by Janardhan while proceeding on the road, they did not produce any

evidence before the Tribunal. Normally, an injured person is the best witness unless her evidence is discredited and the same can be believed in view of the principle laid down by the Apex Court in ***G. Brahma Swaroop Vs. State of U.P.***, wherein it was held as follows:

“Where witness to occurrence has himself been injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness who comes within an inbuilt guarantee of his presence at scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone, convincing evidence is required to discredit an injured witness.”

37. The principle laid down by the Apex Court in ***Brahma Swaroop***⁹ is of course under Criminal law but the general principle laid down by the Apex Court is that an injured witness is the best witness unless his evidence is discredited by convincing evidence; the same principle can be applied even to the Motor Accidents Claims though negligence is not required to be proved by applying the golden thread rule *i.e.*, beyond all reasonable doubt.

38. In the cross-examination of PW.1, no suggestion was put to her that she was not traveling as a pillion rider on the scooter and did not sustain any injuries in the said accident. On the other hand, the suggestions put to PW.1, would go to establish that she was readily present at the time of accident, traveling as pillion rider on the scooter at the time of accident and sustained injuries in the accident. Therefore, her presence on the scooter at the time of accident as a pillion rider cannot be doubted in the absence of specific denial in the cross-examination about her presence and sustaining injuries in the accident. Therefore, the evidence of PW.1, who is an injured in the same accident while traveling as a pillion rider on the scooter along with her husband Janardhan, is to be believed.

39. The petitioner also examined one S. Mahipal Reddy, who testified about witnessing the accident directly in his examination-in-chief, but in the cross-examination learned counsel for the respondents could elicit that he did not disclose about witnessing the accident to any one, earlier to his examination before the Tribunal and did not give report to the Police and that no panchanama was held by

the Police in his presence. However, his consistent evidence is that he shifted the injured Janardhan to the Hospital though no report was given by him. On the other hand, Mahipal Reddy was cited as 4th witness in the charge sheet; merely because he did not give report to the Police and did not inform anything about witnessing the accident to anybody prior to his examination, his evidence cannot be brushed aside for the reason that he witnessed the accident and cited as 4th witness in the charge sheet on behalf of the prosecution. In those circumstances, it is difficult to dispel the evidence of PW.2 with regard to his witnessing the accident.

40. PW.3 is one Rakesh Reddy and according to his evidence, he witnessed the occurrence of accident, Car hit against the scooter; immediately the rider of the scooter fell down unconscious just by the side of the scooter in the corner of Mangala function hall and when he reached the place of accident, the accident Car was found opposite to the Mangala function hall as the accident scooter and its rider fell down, he also found the wife of the rider of the scooter, PW.1, and she was requesting the 2nd respondent-appellant, driver of accident Car to shift the injured Janardhan to B.H.E.L. General Hospital, since he was responsible for the accident. The other people who gathered at the place of accident also insisted him to shift the injured Janardhan and his wife; accordingly, he shifted the injured Janardhan and PW.1 herein to B.H.E.L. General Hospital. Out of sympathy, he followed the Car to B.H.E.L. General Hospital and after preliminary examination and first-aid, the doctors therein advised PW.1 to shift the injured Janardhan to Apollo Hospital as his condition was critical. The testimony of PW.3 with regard to his presence at the time of accident and following the injured to B.H.E.L. General Hospital *etc.*, shows that he directly witnessed the accident. He also found both scooter and Car near Mangala function hall. In the cross-examination, PW.3 admitted that he had no prior acquaintance with the petitioner, and he was working in Hi-tech City but he had relatives in B.H.E.L. and he was called by the Police to the inquest panchanama which took place in Osmania General Hospital and further elicited that the Police did not record his statement in the Osmania General Hospital but he was only an inquest panchayatdar listed as 6th witness in the charge sheet. In the cross-examination, a suggestion was put to him that he did not disclose the name of the

driver of Car to the police when the police recorded his statement and further suggested that he did not witness the occurrence of accident and he bluntly denied the said suggestion.

41. To disprove the evidence of PW.3, respondents examined one Basireddy, who allegedly attended the birthday function of his friend's grand son on 12.10.2011 at 06.00 p.m. in Mangala function hall at B.H.E.L.; when he was returning at about 08.00 p.m. along with his friend Shiva Reddy, and when they were waiting in front of the function hall, witnessed, proceeding of Janardhan on his scooter driving in rash and negligent manner, suddenly took a right turn towards Venkateswara Swamy Temple from cross roads and unable to control the scooter, fell down and became unconscious and RW.1 and his friend shifted him to B.H.E.L. after informing the same to the family members and Police, and he came to know that the Janardhan died on the next day while undergoing treatment. In the cross-examination, he admitted that he is a neighbour of respondents, earlier worked in ICRISAT, attended the birthday function of his friend's grandson, Yadireddy; while waiting for an auto in front of the function hall, he witnessed the accident. He did not witness hitting of the Car; a suggestion was put to him that he did not witness the occurrence of accident and denied by him. However, the petitioners examined PW.5 to disprove the very presence of RW.2. B. Mahender, was the person who took the function hall on 12.10.2011 to celebrate his son Yeshwant's birthday and took possession of the function hall at about 02.00 p.m. on 12.10.2011 for initial preparation for the function which commenced at 08.30 p.m. and concluded at 01.00 a.m. on 13.10.2011. According to him, Basireddy and Shiva Reddy did not attend the birthday function as they were not invited and he had no acquaintance with them. When he was cross-examined by the learned counsel for the respondents, he admitted that he did not file any proof regarding booking of Mangala function hall; except that, nothing has been elicited to rebut the testimony of PW.5. The evidence of PW.5 and RW.2 is only oath against oath, however, the letters marked as Exs.A-10 and A-11 dated 18.05.2013 obtained under the Right to Information Act, 2005 would go to establish that the one M. Mahender, Staff No.6036716 had booked Mangala function hall on 12.10.2011; Therefore, the evidence of RW.2 is not reliable and his attendance to the birthday function of his friend's grand son *i.e.*, Yadireddy on 12.10.2011, waiting at the function hall for auto and narrating the manner of accident *etc.*, cannot be accepted.

On the other hand, the evidence of PW.5 coupled with Exs.A-10 and 11 would establish that the function hall was booked by him and PWs.2 and 3 witnessed the accident.

42. The 2nd respondent himself was examined as RW.1; to substantiate his contention that he never caused the accident and never involved in the accident supported his contention and it appears from the examination-in-chief that on the information of Basireddy, he came to know that Janardhan fell down while riding the scooter and sustained injuries. While the scene of offence is opposite to the function hall, it discloses that death was due to self negligence. In the cross-examination, he admitted that he does not know about the contents of the affidavit filed by him, scene of offence was observed on the next day of the accident and it shows that the accident occurred due to negligence of the driver of the Car and his name was also mentioned in the observation report, Ex.B-1. The witness denied his admission in B.H.E.L. General Hospital on 12.10.2011 and a suggestion was put to him that he sustained injuries when the general public beat him on the spot and that his Car is involved in the accident and liable for payment of compensation but the witness denied those suggestions. No doubt, in the cross-examination, RW.1 admitted that as per the scene of offence observation report, Ex.B-1, the accident occurred due to rash and negligent driving of the Car by him and, strangely, a suggestion was put to him that he was beaten by general public, received injuries at the place of accident in the hands of general public gathered at the place of accident. Of course, RW.1 denied it but his evidence is dispelled by producing Ex.A-9, information obtained under the Right to Information Act dated 19.06.2013. According to Ex.A-9, Mr. Siddhardh, S/o. Shankaran was admitted in B.H.E.L., General Hospital on 12.10.2011 at about 11.55 p.m. in casualty and discharged on 13.10.2011 but he was not discharged, left the Hospital against medical advice. Therefore, the evidence on record established that at the place of accident the general public in a commotion beat RW.1 for causing accident, he received injuries. If really, he did not receive injuries, question of his admission in the hospital and treatment on 12.10.2011 at 11.55 p.m. does not arise. On broader probabilities of entire evidence on record, it is but nothing that the 2nd respondent is responsible for the accident otherwise question of sustaining injuries by him in the incident does not arise.

43. The learned counsel for the 2nd respondent-appellant during course of argument would contend that the evidence on record was not appreciated properly by the Tribunal and the principles of Evidence Act are applicable even to the Motor Accidents Claims also. No doubt, application of general rules of evidence is not excluded under the statute; however, claims under the Motor Vehicles Act before the Tribunal are summary in nature as held by the Delhi High Court in ***Pushpa Rana***², wherein it was held as follows:

“We therefore sustain the finding of the Tribunal that the accident had taken place due to the rashness and negligence of RW.1 (driver) and consequently the appellant is vicariously liable to pay compensation to the claimant.

The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must fail, was rejected rightly. The requirements of culpable rashness under Section 304-A I.P.C. is more drastic than negligence sufficient under the law of tort to create liability. The quantum of compensation was moderately fixed and although there was, perhaps, a case for enhancement, the High Court dismissed the cross-claims also. Being questions of fact, we are obviously unwilling to re-open the holdings on culpability and compensation.”

44. In ***Pushpa Rana***², the Delhi High Court held as follows:

“(ii). Criminal record showing completion of investigation of police and issue of charge sheet under Section 279/304-A IPC against the driver; (iii) certified copy of FIR, wherein criminal case against the driver was lodged; and (iv) recovery memo and mechanical inspection report of offending vehicle and vehicle of the deceased. These documents are sufficient proofs to reach the conclusion that the driver was negligent. Proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in this regard. Hence, this contention of the counsel for the appellant also falls face down. There is ample evidence on record to prove negligence on the part of the driver.”

45. The Apex Court in ***Meena Variya***³ held that the proceedings under Motor Vehicles Act are not akin to proceedings in a civil suit and hence strict rules of evidence are not required to be followed in that regard. Judgment of the Apex Court

is binding precedent on this Court. Therefore, applying the principles laid down by the Apex Court in **Meena Variya³**, we have no hesitation to conclude that the general rules of evidence cannot be applied to claims under the Motor Vehicles Act, the Tribunal did not go into deep while appreciating the evidence of various witnesses but that by itself is not sufficient to disbelieve the claim of the petitioners.

46. Learned counsel for the 2nd respondent-appellant filed petition under Order XLI Rule 27 of C.P.C. to receive documents set out in the list as additional evidence including the deposition of witnesses examined before the Criminal Court; depositions of witnesses cannot be marked as additional evidence since they are previous statements and unless they are confronted to the witness, it is difficult to mark those statements as additional evidence. Therefore, when the witnesses are alive their statements cannot straight away be received as additional evidence under Order XLI Rule 27 of C.P.C. Therefore, the statements recorded in C.C. No.369 of 2012 cannot be received as additional evidence. 2nd respondent-Appellant also produced the copies of judgment in C.C. No.369 of 2012 and the same can be received and marked as additional evidence by consent, in view of the principles laid down in Para 16 of the judgment of the Apex Court in **Raj Kumar Vs. Ajay Kumar and another**. No doubt in Calendar Case, the driver *i.e.*, 2nd respondent-appellant herein was found not guilty for the offence with which he is charged. Proving of rashness and negligence in a Calendar Case is totally different from proving rashness before the Tribunal; unless the prosecution was able to prove rash and negligent act of causing the accident due to culpable rashness and negligence, the driver cannot be found guilty for the offence punishable under Section 304-A of I.P.C. and that too in Calendar Case, strict proof of the guilt of the accused beyond reasonable doubt is necessary but whereas in Motor Accidents Claims Tribunal, probability of the circumstances alone shall be taken into consideration without insisting the principle of proof beyond reasonable doubt. Therefore, mere failure to prove the guilt of the accused, 2nd respondent-appellant herein in Calendar Case by the prosecution beyond reasonable doubt is not sufficient to held that the accident occurred not due to rash and negligent act of the 2nd respondent-appellant herein.

47. The word 'negligence' is not defined anywhere in the Motor Vehicles Act but in ***Ravi Kapur Vs. State of Rajasthan***, the Apex Court emphasized the meaning of negligence while deciding a case under Section 304-A of I.P.C. and held as follows:

"Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even, when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving' within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

The Court has to adopt another parameter, *i.e.*, 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle in a public way, there is an implicit duty cast on the drivers to see that their driving does not engage the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

48. To convict a person for the offence punishable under Section 304-A of the Indian Penal Code, the prosecution has to prove culpable rashness or negligence as held by Apex Court in ***Subbarao Vs. State***, wherein it was observed as follows:

"Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precautions guarding against injury to the public generally or to any individual in particular."

49. In ***Syed Akbar Vs. State of Karnataka***, the Apex Court laid down the same principle. Therefore, it is the duty of Court to record a finding whether negligence attributed to accused in criminal case amounts to culpable rashness or negligence whereas culpable rashness or negligence is required to be proved in claims based on principles and proof of occurrence of accident due to rash and negligent act by itself is sufficient.

50. While dealing with similar circumstances, this Court in ***G. Kumar Vs. State of A.P., Represented by its Public Prosecutor, K. Nagaraju Vs. State of A.P*** and ***K. Rajayya Vs. State of A.P. Represented by Public Prosecutor***, reiterating the same principle held as follows:

"Mere driving of vehicle at high speed is not the determining factor about culpable rashness and negligence of the rider of the motorcycle or driver of the motorcycle."

51. From the principles laid down by the Apex Court, failure to take reasonable care amounts to negligence; in the present case, there is satisfactory and cogent evidence to prove that the accident occurred due to rash and negligent act of the driver of Car *i.e.*, 2nd respondent-appellant herein. If the principles laid down in the above judgments are applied to the facts of present case, it can safely be concluded that the accident occurred due to rash and negligent act of the driver of Car since he failed to take reasonable care. Moreover, the judgment in Criminal Prosecution cannot be taken as basis in a claim petition filed under the Motor Vehicles Act, since culpable negligence is not required to be established to fasten liability to pay compensation and proof of negligence in a claim petition filed under the Motor Vehicles Act.

52. One of the contentions of learned counsel for the 2nd respondent-appellant is that Car never involved in the accident and the Motor Vehicles Inspector's Report is not sufficient to prove the involvement of Car in the accident. No doubt, the Motor

Vehicles Inspector's report marked as Ex.A-4 shows that the he inspected the Car on 25.10.2011 whereas the accident occurred on 12.10.2011 at 08.00 p.m. near Mangala function hall, B.H.E.L. There is undoubtedly, delay in inspection of the Car but that by itself is not a ground to disbelieve rash and negligent act of the 2nd respondent-appellant and in Column Nos.9 and 10, after due inspection, the Motor Vehicles Inspector found that breaks are of even action and efficient and there was no break or lubrication failure. However, in column No.8 of Ex.A-4, the Inspector found that the right side door was damaged. In the entire evidence of RW.1, he did not explain as to how right side door was damaged. When the door was damaged, it is for the 2nd respondent-appellant to explain whether the damage was caused either subsequent or prior to the date of alleged accident. Unless it is established that the damage was due to any other reason or some time before or after the accident, involvement of the accident Car in the accident cannot be ruled out. On the other hand, in the cross-examination of any of the witnesses nothing was attributed to implicate the car being driven by 2nd respondent at the time of accident. If really, the car is to be implicated in the accident to claim compensation, no wise man will implicate a car without insurance. Hence, the alleged implication of car is improbable to the normal circumstances and conduct of a human being.

53. Learned counsel for the 2nd respondent-appellant contended that the Motor Vehicles Inspector's report cannot be looked into for the reason that the scooter was not inspected, the inspection was conducted after 13 days from the date of accident and the Inspector was not examined as witness before the Tribunal so as to elicit truth in the contents of the report. No doubt, the Motor Vehicles Inspector was not examined as a witness and it is only a certified copy of his report which got marked through PW.1. Therefore, the witnesses examined on behalf of the petitioners and since the general rule of evidence are not applicable to the Motor Accidents Claims Tribunal, in view of the judgment of the Apex Court referred *supra*, failure to examine the Motor Vehicles Inspector is not a ground to disbelieve the contents of Ex.A-4 and even the delay in inspection and failure to inspect the scooter is of no consequence in the absence of any explanation for the damage to the right side door in the evidence of RW.1. Therefore, taking into consideration the contents of Ex.A-1 coupled with the oral evidence of PWs.1 to 5, we are of the considered view that the accident occurred due to rash and negligent act of the 2nd respondent-appellant

herein.

54. To award compensation in the Motor Accidents Claims, the cause of death must be due to the rash and negligent act of the driver of accident vehicle. As per the material available on record, Janardhan died due to the injuries sustained by him in the road accident. There is no dispute with regard to death and sustaining injuries in the road accident. The factum of death is proved by producing Ex.A-3, post-mortem certificate, which shows that Janardhan sustained the following ante mortem injuries:

1. Abrasion 8 x 4 CMs over right side of the occipital region of the scalp outer side;
2. Contusion of the scalp seen in left side of the scalp and occipital region;
3. Fracture seen in left parietal bone of the skull;
4. Subdural haemorrhage and subarachnoid haemorrhage of the brain seen.

55. If the accident occurred due to fall on the ground while riding a scooter, the question of sustaining such serious injuries which resulted in the death of Janardhan does not arise, since the accident occurred near a turning point, according to the respondents. Hence, both the oral and documentary evidence cumulatively established that the 2nd respondent-appellant drove the accident Car in a rash and negligent manner and caused the accident, as a result of which Chittimala Janardhan and PW.1 received injuries and Janardhan, while undergoing treatment in Apollo Hospital, succumbed to the injuries. Therefore, we held that the accident occurred due to rash and negligent act of the 2nd respondent-appellant and Janardhan died due to injuries received by him in the same accident that occurred on 12.10.2011 at 08.00 p.m. Accordingly, both these points are answered in favour of the petitioners-claimants and against the 2nd respondent-appellant.

56. One of the contentions of learned counsel for the petitioner herein is that the enquiry was not properly conducted by the Tribunal and requested this Court to

remand the matter to the Tribunal for exercising power under Order XLI Rule 23 or 23-A and 25 of C.P.C. placing reliance on a judgment of the Apex Court in ***REMCO Industrial Workers House Building Co-operative Society Vs. Lakshmeesha M. and others***, wherein it was held as follows:

“The powers of the appellate Court are not inhibited by acts or omissions of parties. Rule 25 or Order XLI of Code of Civil Procedure empowers appellate Court to frame an issue and remit it for trial which has been omitted to be framed and tried by the trial Court and which appears to the appellate Court essential to the right decision of the case.”

In view of our foregoing discussion, the Appeal is allowed in part, reducing the compensation amount awarded by the Tribunal from Rs.53,90,000/- to Rs.42,99,144/- together with interest at the rate of 9% p.a. from the date of petition till the date of realization. Accordingly, both the respondents are directed to deposit the entire compensation amount within sixty (60) days from today. On such deposit, the 1st petitioner is entitled to withdraw an amount of Rs.22,99,144/- and the 4th petitioner is entitled to the remaining amount of Rs.20,00,000/-. Petitioners 1 and 4 are entitled to withdraw their respective share amount, excluding the amount, if any, withdrawn by them earlier, with accrued interest thereon. The amount of compensation, if any, withdrawn by petitioners 2 and 3, shall be adjusted towards the share of petitioners 1 and 4.

In consequence, miscellaneous petitions, if any, pending in this Appeal shall stand closed. No order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 22-04-2015.

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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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M.A.C.M.A. No. 2347 OF 2013

(Judgment of the Division Bench delivered by
Hon'ble Sri Justice M. Satyanarayana Murthy)

Date. 22-04-2015

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23.04.2015