

*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**
&
***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+M.A.C.M.A.No.471 OF 2016

% Dated 13.04.2016

Between:

# Reliance General Insurance Company Limited Rep. by its Legal Manager, Sagar Complex, Abids, Hyderabad	And	...appellant/2 nd respondent of claim petition
\$ Smt. S.Sunitha @ R.Sunitha and three others		Respondents/petitioners
Kaniganthi Laxmi		5 th respondent/owner of the crime vehicle.

! Counsel for the Appellant : Sri T.Mahender Rao

^ Counsel for respondents 1 to 4 : None appeared

< GIST : None appeared

>HEAD NOTE : ---

? Cases referred: :

- [1]. 2004 (4) ALD (NOC)-313
2. (2013) ACJ 2141
3. (2011)5 Scale 240=CIVIL APPEAL NO.6110/ 2011-[Arising out of SLP(C) No.2057/2011]
4. (2007)ACJ 1284
5. 1965(1) A11. E.R-563
6. 1963(2) All.E.R-432
7. 1969(1)A11.E.R –555
8. 1995 ACJ 366(SC)-CA Nos.1799 &1800 of 1989 with SLP(Civil) 4586 of 1989
9. (1999) ACJ 10
10. (2004) ACJ 448
11. (2005) ACJ 1441
12. 1996 ACJ 831
13. 1994 ACJ 1 SC
14. 1966 ACJ 57 SC

15. 1942 AC 601
16. (2005) 6 SCC 236
17. (2008) 2 SCC 763
18. 2002 (1) APLJ 473
19. 2009 ACJ 69
20. (2009) 6 SCC 121(2JB)=2009-ACJ-1298
21. (2013) 9 SCC 65-(3JB)
22. (2013) ACJ 1403=(2013) 9 SCC 54,
23. 2009 ACJ 1298
24. 2013(4)ALT 35(SC)

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

MACMA No.471 OF 2016

JUDGMENT: *(Per Hon'ble Dr. Justice B.Siva Sankara Rao)*

Impugning the award dated 27.10.2015 in O.P.No.224 of 2014 passed in favour of the four claimants for Rs.34,50,000/-(Rupees thirty four lakhs fifty thousand only) with interest at 12% p.a. from the date of claim petition till date of decree and later at 6% p.a. by the learned Chairman of the Motor Accidents Claims Tribunal–cum-II Additional Chief Judge, (Fast Track Court), City Civil Court (*for short, 'Tribunal'*), Hyderabad, the 2nd respondent-Reliance General Insurance Company Limited (*for short, 'Insurer'*), rep. by its Legal Manager, of the O.P.No.224 of 2014, preferred the present appeal.

2. The appeal respondent Nos. 1 to 4 are no other than wife, minor daughter and parents of the deceased by name S.Prabhu Santhoshkumar, aged about 32 years. They filed said claim petition for Rs.80,00,000/-(Rupees Eighty lakhs only) under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) against owner of the Maruti Suzuki bearing No.AP15TV 3065 (5th respondent to the appeal) and the appellant-Insurer herein.

3. As per the claim petition, it was due to the rash and negligent driving of the driver of the crime car stated supra belongs to the 5th respondent herein, the car dashed the bike of the deceased Prabhu Santhoshkumar while he was proceeding on his bike on 19.11.2013 at about 21.45 hours near Abhimanyu Bar, Vaidehinagar, Vanasthalipuram and was taken to Kamineni Hospital, Hyderabad immediately after the accident, however, he was succumbed to the injuries meantime.

4. The 1st respondent-owner of the car Smt. K.Laxmi remained exparte before the tribunal and the 2nd respondent-Insurer supra contested the matter by filing counter while disputing the manner of accident, age, avocation, earnings of the deceased, entitlement of compensation and any negligence on the part of driver of the car, contending that the deceased was in drunken condition and the accident was taken place due to his sole negligence and otherwise as per rough sketch there was collusion between the two vehicles, there is no valid registration of the car and driver of the car has no valid licence in seeking to dismiss the claim.

5. It is pursuant to the pleadings before the tribunal and in the course of enquiry, the 1st claimant was examined as P.W.1 and two more persons including P.W.2 (so called eye witness to the accident) were examined and placed reliance on Exs.A.1 to A.15 including First Information Report, Chargesheet, Inquest report, post mortem report, M.V.I. report, rough sketch, employment certificate, pay slip, salary sheet, SSC and decree with provisional certificates, marriage certificate driving licence and Insurance policy.

6. Basing on said oral and documentary evidence and on hearing both sides, the tribunal in awarding compensation with interest referred supra, observed that P.W.2 eye witness in the cross-examination stated the road was busy road and the accident was

taken place at the turning point and the deceased was proceeding on straight road at 40 kms speed and to take right turn the vehicle must go slow and by taking right turn the car was not called proceeding in wrong route, he did not state before police that the car was in wrong side; for R.W.1 to say the accident was due to negligence of deceased admittedly he has no personal knowledge and R.W.2 other witness deposed that he cannot say whether the car dashed the two wheeler or vice-versa as the occurrence was in seconds of time and he cannot say who was at fault. The M.V.I. report is with the opinion that the accident was not due to any mechanical defects of the car. The rough sketch shows the scene of offence is at one corner of the four road junction and the car was taking right turn from Vijayapuri colony towards Vaidehinagar road where the accident occurred near junction from both the vehicles colluded due to negligence of drivers of both the vehicles. The tribunal therefrom held that the deceased-bike rider also contributed to the accident apart from the negligence of the car driver. While assessing the earnings of deceased, the tribunal observed in arriving just compensation that the deceased was working as Assistant Manager in Human Fullerton India Credit Company Limited, Hyderabad since 23.08.2013 and he was undergoing probation by the date of accident 19.11.2013 and his net salary is Rs.34,468/- and his salary includes conveyance of Rs.8,800/-, H.R.A. of Rs.4,800/- besides personal allowance of Rs.18,400/- that are reflecting from Exs.A.7to A.9 pay slip, salary sheet and employment certificate and from the net salary supra, by applying multiplier 16 from the age of the deceased by $\frac{1}{3}^{\text{rd}}$ deduction towards personal expenses, arrived at Rs.44,11,904/-(Rupees forty four lakhs eleven thousands nine hundred and four only) and 50% negligence of the deceased by deducting therefrom and adding 50% towards future prospects to the earning, the tribunal arrived at Rs.33,10,928/- besides Rs.1,00,000/- towards loss of consortium to 1st claimant-wife, Rs.5,000/- towards

funeral expenses, Rs.5,000/- towards loss of estate and Rs.25,000/- towards love and affection to the minor child, in all total of Rs.34,45,928/- rounded to Rs.34,50,000/- was awarded.

7. It is impugning the same in the present appeal is filed, the counsel for the appellant-Insurer in support of the grounds of appeal, before admission of the appeal contended that the trial Court gravely erred in finding composite negligence of deceased rider of the bike vis-à-vis the driver of the car instead of holding the deceased was alone negligent and liable for the accident that too, in proceeding at about 40 kms speed on the road and taking right turn by the driver of the car was not on wrong side even as per P.W.2 eye witness to the accident, that the tribunal also gravely erred in arriving the net salary of Rs.34,468/- without deduction of personal expenses of Rs.18,400/- besides conveyance allowance of Rs.800/- and the compensation awarded is highly excessive, so also in taking 50% future prospects even the deceased was only a probationer in the private job and that the rate of interest awarded at 12% p.a. is also unsustainable and the award of the tribunal thereby is liable to be set aside.

8. Heard the learned standing counsel for the appellant-Insurer before admission of the appeal and perused the material also by securing the original record of the tribunal and the decisions placed reliance, in deciding whether there are any grounds to admit the appeal either on the quantum of compensation including with reference to the earnings and permissible deductions and prospective increase or on rate of interest awarded or on the finding of the negligence as arrived by the tribunal to interfere.

9. Coming to the manner of accident, as per Ex.A1 FIR in Cr. No.882/2013, on the report of one Golla Ramesh, dt.20-11-2013 at 0.45 hours, that on the motor cycle AP 29 UB T/R.2696 of Ravula Prakash, his brother-in-law Sadhu Santosh (deceased) at about 11.45

p.m of dated 19-11-2013 (within 2 hours of the occurrence the report was given and FIR was registered) was while proceeding from B.N.Reddy Nagar to Vijayapuri Colony towards his house, at Videhinagar, near Abhimanyu Bar, the driver of Car AP 015 TV 3065 by rash and negligent driving coming in wrong route in opposite direction to the motor cyclist supra, dashed the motor cycle and as a result, the motor cyclist sustained bleeding injuries and when taken in 108 ambulance to Kamineni hospital, he was declared died, hence to take action against the car driver. The police after investigation filed the Ex.A2 charge sheet against the car driver by name Kanniganti Ravi@ Ravinder of Karimnagar district. The Ex.A5 MVI Report column Nos.16&17 speak the driver`s name supra and also the driving licence particulars of holding valid driving licence and also the policy particulars of the crime car belongs to the insured and the appellant herein issued the policy which is in force. These facts also not in dispute from evidence of Rws1&2 or from cross examination of PW1&2 with reference to the Ex.A5 MVI Report and Ex.B1 policy. The Ex.A5 MVI Report column No.19 speaks no mechanical defects to the car in resulting the accident. The Ex.A4 PM Report speaks multiple external and internal injuries with diffuse subdural hemorrhage and injury to brain and the cause of death was due to the head injury. The Ex.A2 charge sheet also refers Doddi Ramesh-PW2 as eye witness to the accident. Doddi Ramesh-PW2 deposed in his chief affidavit evidence that, the deceased was proceeding on the motor cycle on correct side of the road and while approaching near Abhimanyu Bar at Vaidehi Nagar, the driver of the Maruti Swift Car driving in a rash and negligent manner on wrong side of the road dashed the motor cyclist proceeding in opposite direction and the said motor cyclist sustained multiple injuries including head injury and was shifted to Kamineni Hospital, Hyderabad and in the way he breathed the last and the accident was due to rash and negligent driving of the driver of the car and he stated the same before police during investigation. He is aged

about 25 years, a private employee and resident of Vaidehi Nagar. In the cross-examination he deposed that he did not report to the police of what he witnessed the accident. He deposed that the car was proceeding from Vijayapuri colony to Vaidehi Nagar and the deceased was on the motor cycle proceeding from B.N.Reddy Nagar to Vijayapuri colony and to go to Vaidehi Nagar, Road No.12, from Vijayapuri colony, there is a right turn and the place of accident was at the turning point and it was a busy road. It is true the vehicle go straight road was at speed. It is true the deceased was proceeding on the straight road at 40kms speed to take right turn the vehicle has to go slow. He denied the suggestion of no rash or negligence driving on the part of the car driver while taking right turn and the negligence is of the deceased –bike rider only while proceeding on the straight road. He deposed the car taking right turn was not called as wrong route, however, he adds that the vehicle was taking right turn instead of going middle of the road took turn very near to the corner and dragged the motor cyclist and denied the suggestion of the deceased was in a drunken state and could not control the motor cycle and was instrumental for the accident or the car while taking right turn was operating right indicator. He deposed that in his chief affidavit he stated that the car was on the wrong side, which he did not state before the police. The law is fairly settled that evidence of a witness is to be read as a whole and no any stray sentence can be taken to say as any admission. To consider as admission, it must be clear from the entire reading of the evidence and not from pick and choose of any sentence alone without reading and understanding on what context the witness so deposed. From said deposition of P.W.2, there is nothing to say the deceased bike rider was proceeding rashly and negligently or even on wrong side but for the car driver proceeding on wrong side and in rash and negligent manner from entire reading of the evidence. What he deposed of in the straight road the deceased was proceeding on his bike at an estimated speed of 40 kms., does not mean even at the

place of accident the same speed continued. From the MVI report, there is, as per column No.8, car bumper damaged at right side so also right fog light and right head light and there is a scratch on the bonnet and front side number plate damaged. What P.W.2 deposed in his cross-examination in support of it is that the car was taking right turn instead of going middle of the road took turn very near to the corner and dragged the motor cyclist. In fact, a perusal of Ex.A.6 rough sketch clearly speaks the car was from Vijayapuri colony proceeding on wrong side from east to west to say it was on the right side of the road instead of left side of the road. In fact, the deceased from B.N.Reddy Nagar to Vijayapuri colony in the straight road proceeding on the left side of the road and was not at all on wrong side, that too, after crossing the four road junction by the bike rider proceeding at left side, the accident occurred. If really, the car driver was by giving signal lights to take right curve towards north and the bike rider is at fault, the damage must be to the car left side. Whereas, the M.V.I. report clearly speaks from the damage to the car only on right side fog light and right side head light and dent of the bumper at right side and scratch at right side. It clearly shows while bike was proceeding on left side of the road, the car driver taken suddenly the right turn uncaring of the bike rider proceeding while negotiating the right turn that resulted the accident. Thus, it is difficult to say there is any negligence on the part of the deceased much less for the tribunal to find equal negligence as equal contributor to the accident. On value of scene observation sketch, in ***APSRTC Vs., D.Sasi Kala***^[1] it was held that Panchanama and rough sketch of the scene are important in proof of actual occurrence to assist the tribunal rather than relying on charge sheet contents as basis. In ***Jiju Kuruvila Vs. Kunjamma Mohan***^[2] (2JB), It was held that where eye witness in support of the claim deposed that bus hit the car while both vehicles were proceeding in opposite direction, due to rash and negligent driving of the bus driver against

whom FIR also lodged and police after investigation filed charge sheet, when neither owner of the bus nor driver of the bus denied the manner of accident before the tribunal much less coming to witness box, insurance company of bus relying on the P.M. report contended that the accident was occurred due to negligent driving of the car driver-deceased who were under intoxication, when scene mahazar does not suggest any negligence of deceased car driver, the P.M. report even suggests the deceased car driver has taken liquor, there is no basis to give any finding of deceased was driving the car rashly and negligently much less to belie the direct evidence of eye witness and FIR, charge sheet and scene mahazar and thereby held by the Apex Court that the tribunal went wrong in fixing liability of drivers of bus and car at 75% and 25% contribution and equally by the High Court in modified to 50% each in ultimately holding by the Apex Court of no negligence of the deceased car driver but for sole negligence of the bus driver in holding the owner and Insurer of the bus to be made liable to pay compensation.

10. Having regard to the above, this Court can hold unhesitatingly that the tribunal went wrong in saying there is equal contribution of the car driver and the bike rider(deceased) for the result of the accident, though the facts of the case on hand clearly proves the car driver alone is at fault and the deceased bike driver is not at fault and there is nothing to prove any contribution by him to the result of the accident, but for of the Maruti car driver of the Insured to be made liable to indemnify by the appellant-Insurer to satisfy the claim.

11. The appellate Court in this regard undoubtedly and within its powers under Order XLI Rule 22 and 33 CPC can interfere with the finding of the tribunal on its correctness, for entire matter is at large with no need of any cross-objections of opposite side much less even for admitting an appeal from the perusal of merits as to prima facie case to admit or not, as the provisions of Order XLI CPC equally applicable to the appeal against a Motor Accidents Claim. In this

regard, the Apex Court in ***Ranjana Prakash Vs. Divisional Manager***^[3] held as follows:-

“8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by claimants seeking enhancement of compensation.”

12. From the above, for no dispute on the maintainability of the appeal u/sec. 173 of the M.V.Act, against the award of the tribunal by the Insurance company, coming to the driver of the car a necessary party raised in the appeal arguments for the first time by the appellant in impugning the award of the tribunal, by placed reliance upon ***OIC Ltd. Vs. Meena Variyal***^[4] (2JB), same cannot be permitted to raise from the doctrine of waiver for not raised either in the counter before the tribunal or even in the evidence before the tribunal or not even in the grounds of appeal before this Court in the factual matrix of the case though in ***Meena Variyal*** supra it was held in a claim u/sec. 166 M.V.Act, the tribunal ought to have insisted that driver be impleaded. Even coming to the proof regarding the earnings of the deceased from the expression speaks that the claimant should have been asked to produce rather oral evidence the documentary evidence regarding the salary of the deceased in a private limited company, in the case on hand, Exs.A.7 to A.9 filed through P.W.1 and proved through P.W.3 and same could not be rebutted from the onus shifts, but for a stray

suggestion as created that could not be said discharge of the onus much less disproving said evidence.

13. Coming to decide what is the just compensation in the factual matrix of the case the claimants are entitled and the compensation arrived by the tribunal is excessive to reduce or not concerned, it is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In **Ward v. James**^[5], it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case.

Upjohn LJ in **Charle Red House Credit v. Tolly**^[6] remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in **Parry v. Cleaver**^[7] observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal

deprivations. The Apex Court in **R.D.Hattangadi v. Pest Control (India) Private Limited**^[8] at paragraph No.12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependency and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required. In **Helen C. Rebello Vs. MSRTC**^[9] the Apex Court (2JB) observed that the word 'just' in the phrase 'just compensation' denotes equitability, fairness, and reasonable having large peripheral field. On facts in **Helen C. Rebello** it was observed that amount received under LIC policy of deceased not liable to be deducted from computation of compensation under the M.V.Act, for the same is contractual and payable for any type of death whereas the motor accident claim compensation is the statutory liability for the accidental death. In **Asha Vs. UIIC Ltd.**,^[10] (2JB) it was observed that the claimants are entitled to be compensated for the loss suffered by them to say which is the amount which they would have been receiving at the time when the deceased was alive. In **NIAC Ltd Vs. Charlie**^[11] it was observed referring to **UPSRTC Vs. Trilokchand**^[12] (3JB), **G.M. KSRTC Vs. Sushama Thomas**^[13] **MCD Vs. Subhagwanthi**^[14]

and ***Davies Vs. Powell DAC Limited***^[15] in a fatal accident action, the accepted measure of damages awarded to the defendants is the pecuniary loss suffered and is likely to be suffered by each of them as a result of the death. In ***TN Transport Corporation v. Raja Priya***^[16] (2JB) the above expressions of ***Charlie, Trilokchand, Sushama Thomus*** and those referred therein were referred to the same conclusion on determination of compensation in a death claim and further on the rate of interest by considering the prevailing rate of interest in bank deposits and steep fall in the bank lending rate, it was reduced from 9% awarded by the tribunal and affirmed by the High Court to 7.5% p.a. as just and reasonable within the judicial discretion to reduce by sitting in appeal against. In ***NICL Vs. Indira Srivastava***^[17] (2JB) it was held referring to ***Helen C. Rebello*** and other expressions including ***Asha*** supra, in explaining the meaning of the words income and just compensation used in Section 168 of the M.V.Act, to decide depending on facts and circumstances of each case that the compensation to be awarded is just and equitable rather than a bonanza or source of profit, as compensation is equivalent for loss sustained in terms of money to be estimated. Income of a private sector employee with no pension, not confined to pay packet only as it includes benefits and perks meant for family as distinguished from personal benefits like conveyance allowance etc., that also though form part of income for tax, however, the tax payable has to be deducted. It was also observed the income for consideration under the section is different from the income taxable or not under the I.T.Act. It also observed referring to single judge expression of this Court in ***S.Narayanamma Vs. Secretary to Govt. of India (MOT)***^[18] that allowances like travelling allowance, newspaper, club fees, car maintenance, telephone, servant, need not be included in the earnings of the deceased in computing the dependency. In ***Syed Basheer***

Ahamed Vs. Mohd.Jameel^[19] it was held referring to **Sushama Thomus** and **Indira Srivastava** among others supra that just compensation vests wide discretion in the tribunal though not empowering to determine arbitrarily by ignoring the settled principles as it is to be fair and reasonable by accepted legal standards in the claim made u/sec.166 of the M.V.Act, no doubt, same is beset with difficulties in taking into accounts many imponderables and for accurately cannot be ascertained without involving an element of estimation or conjecture even in arriving the estimated income. There on facts of deceased a businessman from the earnings claimed with reference to income returns however, for future prospects shown from account books held no reliable evidence of future plans expansion or diversification to get further income to consider. The other decision placed reliance is **Sarla Verma v. Delhi Transport Corporation**^[20] In fact, in **Sarla Verma** supra, it was observed that **where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax in arriving the income to determine the compensation and even to the future prospects determination as a rule of thumb laid down therein.** Relying on **Sarla Verma** supra in **Reshma Kumari v. Madan Mohan**^[21] (3JB) it was observed from para 29 onwards as follows:-

29. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, ‘just’ means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously ‘just compensation’ does not mean ‘perfect’ or ‘absolute’ compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.

30. Almost a century back in Taff Vale Railway Co. v. Jenkins (1913-AC 1), the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation

of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been breadwinner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

31. This Court in *C.K. Subramanian Iyer and Ors. v. T.Kunhikuttan Nair and Others*-(1970 (2) SCR 688), reiterated the legal philosophy highlighted in *Taff Vale Railway*(supra) for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the **element of fairness in the amount of compensation so determined is the ultimate guiding factor.**

32. In **Susamma Thomas**, this Court – though with reference to Section 110 B of the Motor Vehicles Act, 1939 – stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in *Susamma Thomas* is equally applicable to the fatal accident claims made under Section 166 of the Act, 1988. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the Tribunals and Courts.

33. We have already noticed the table prepared in *Sarla Verma* for the selection of multiplier. The table has been prepared in *Sarla Verma* having regard to the three decisions of this Court, namely, **Susamma Thomas, Trilok Chandra and Charlie** for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column(4) of the table must be used having regard to the age of the deceased. **Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and consistency in**

selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made onwards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.

34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons; we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma¹⁷ is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases *where the age of the VICTIM happens to be up to 15 years*, we are of the considered opinion

that, in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed.

35. ***With regard to the addition to income for future prospects, in Sarla Verma, this Court has noted earlier decisions in Susamma Thomas, Sarla Dixit and Abati Bezbaruah*** and in paragraph 24 held as under:

“24.....In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. **(Where the annual income is in the taxable range, the words “actual salary” should be read as “actual salary less tax”).** The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”

37. As regards deduction for personal and living expenses, ***in Sarla Verma***, this Court considered ***Susamma Thomas, Trilok Chandra and Fakeerappa*** and finally in paras 30, 31 and 32 held as under:

“30.....Having considered several subsequent decisions of this Court, **we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth (1/4th) where the**

number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. *Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. 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.*

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the (Fakeerappa and Anr. v. Karnataka Cement Pipe Factory and Others; [(2004) 2 SCC 473]) deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

38. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses, but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

39. In our view, the standards fixed by this Court in *Sarla Verma* on the aspect of deduction for personal living expenses in paragraphs 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding para is made out.

14. The expression in **Sarla Verma** is quoted with approval also by the subsequent three Judge Bench expression in **Rajesh Vs. Rajbir Singh** ^[22] (where **Reshma Kumari** was no doubt not referred) in saying the proposition of future prospects increase applies not only in case of regular employees but also in case of self-employed persons and persons with fixed wages, where also the actual income must be enhanced for the purpose of computation of compensation by 50% where the age of the victim is below 40 years.

15. Keeping the above principles in mind, coming to the earnings of the deceased and what amount out of it to be deducted and what amount to be taken into consideration towards loss of contribution to the claimants from the sudden accidental death, where the annual income is in the taxable range, *the words "actual salary" should be read as "actual salary less tax;* from the deceased was aged 32 years as per Ex.A.4 P.M. Report and as per Ex.A.11 driving licence, the deceased was born on 30.07.1982 and the Ex.A.10 SSC certificate of the deceased also proves the same to say as on date of accident 19.11.2003, he completed 31 years. The deceased was a post-graduate in Applied Science as per Ex.A.13 and 15 from Periyar University and passed in distinction in the year 2004 and those are the copies of provisional and regular P.G.Degree certificates to that effect. As the claim is under Section 166 of the Act, as per **Sarla Verma**, **Reshmakumari** and **Rajesh** the multiplier that is applicable is 16 for persons in the age group of 31 to 35 years. The tribunal rightly has taken the multiplier 16. Coming to earnings for consideration and personal expenses deduction out of it, the evidence of P.W.3 who is the Manager(Legal)of Fullerton Indian Private Limited, Hyderabad branch where the deceased was working as H.R. Assistant Manager, since 23.08.2013 (even by the date of accidental death on 19/20.11.2013) as per Ex.A.7 as probationer to say undergoing

probation still. Merely because he is in probation, does not mean he was not in employment with monthly salary to be computed for assessing compensation as on the date and time of death. As per Section 2(22) of the Income Tax Act, 1961 (for short, 'the IT Act') income is an inclusive definition which includes any special allowance and benefit granted to the assessee (employee) other than perks to meet expenses for performance of duties or as employment of profit or to compensate for increase in the cost of living or value of any benefit or perquisite.

16. As per Section 17(2) in Chapter 4 of the I.T. Act, in computation of the income under the Head Salaries perquisite includes value of rent free accommodation provided by the employer or value of any rent concession in respect of the accommodation provided by the employer. Salary includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payments, by whatever name called, but does not include D.A. or D.P. unless it enters into the computation of superannuation or retirement benefits, employer's contribution to P.F., allowances exempted from payment of tax, value of perks specified and any payment or expenditure specially excluded.

17. When such is the case, as per Ex.A.8 the salary statement, his gross salary was Rs.37,125/-p.m. comprising of basic of Rs.13,125/-, HRA of Rs.4,800/-, Personal Allowance of Rs.18,400/- and Conveyance Allowance of Rs.800/- and out of it, the deductions are IT deduction of Rs.438/-, P.F. of Rs.1575/-, Professional Tax of Rs.200/- and Mediclaim recovery of Rs.444/- and the net salary thereby is Rs.34,468/- Ex.A.9 Salary sheet also proved through P.W.3 for the total three months period from 23.08.2013 to 19.11.2013 in this regard. P.W.3 denied the suggestion of deceased never worked in the entity and Exs.A.7 to A.9 are created or he was not paid any salary by the entity or he is deposing false. There is no other much less worth cross-

examination to discredit the evidence of P.W.3 or to doubt the probative value of the Exs.A.7 to A.9. From the above, out of the gross salary of the deceased proved of Rs.37,125/-p.m. comprising of basic of Rs.13,125/-, HRA of Rs.4,800/-, Personal Allowance of Rs.18,400/- and Conveyance Allowance of Rs.800/- and out of it the deductions are IT deduction of Rs.438/-, P.F. of Rs.1575/-, Professional Tax of Rs.200/-and Mediclaim recovery of Rs.444/-in showing the net salary as Rs.34,468/-; the Conveyance Allowance of Rs.800/-, IT deduction of Rs.438/-, P.F. contribution of Rs.1575/-, Professional Tax of Rs.200/-and Mediclaim recovery of Rs.444/-even deducted in arriving the net amount thereafter, for the HRA not liable for deduction as it is not confined to the personal benefit of deceased but for the whole family of the deceased who are the claimants. Further, even it is shown in the pay band as Personal Allowance for a sum of Rs.18,400/-, it is not for any specific personal meeting of requirement like tour travel etc., to personally benefit the employee but for part of the earnings of the deceased to contribute to the family even out of it after meeting the personal expenses deduction of $\frac{1}{3}^{\text{rd}}$ or $\frac{1}{4}^{\text{th}}$, as the case may be. Coming to personal expenses deduction, out of the 4 claimants, the father is a retired employee and pensioner and contended as not dependent solely on the deceased. Even the father is not solely dependent, there could be some contribution to him by the deceased out of his earnings for what he gets pension or other retirement benefits is not only to him but also to his wife and any other family members and that may or may not be sufficient for his survival. What is laid down in Sarla Verma in arriving personal expenses deduction of deceased depending upon number of dependents, even father therefrom not taken as a dependent but for the other three, as per paras 30 to 33 of the expression, which are reiterated in Reshma Kumari as referred supra, if $\frac{1}{3}^{\text{rd}}$ deducted towards personal expenses of the deceased, the contribution of the deceased to the family is the

remaining 2/3rds which comes to (Rs.37,125- Conveyance Allowance of Rs.800+IT deduction of Rs.438+P.F. contribution of Rs.1575+Professional Tax of Rs.200+ Mediclaim recovery of Rs.444=Rs.34,468/- is the net salary as arrived by the tribunal and even instead of Rs.438/- if at least 12% deducted towards income tax, after 50% prospective increase on Rs.34,468+Rs.438=Rs.52,359/-, of which 12% towards income tax deduction taken at Rs.6,283/-, the net amount comes to Rs.46,076/- and after 1/3rd deduction, the 2/3rds comes to Rs.30,717/- x 12x16=Rs.58,97,718/-, besides loss of consortium to the first claimant-wife Rs.1,00,000/-, loss of estate Rs.10,000/-, care and guidance to the minor child Rs.25,000/- even as awarded by the tribunal taken, funeral expenses Rs.25,000/- as laid down in **Rajesh** supra, it comes to more than what the tribunal awarded of Rs.34,50,000/-. Thus, as held in **Ranjana Prakash** supra, this Court has since no power to enhance for what is awarded is no way excessive but low, there is nothing to reduce the quantum of compensation awarded by the tribunal of Rs.34,50,000/-.

18. Coming to the rate of interest, the interest at 12% per annum from the date of claim petition till date of award and later at 6% p.a. till date of realisation awarded by the Tribunal is concerned, though rate of interest to be awarded in a given case is within the discretion of the tribunal, but the said discretion has to be exercised justly and a reasonable rate should be awarded, the appellate Court can interfere with the same to modify it to a reasonable rate. The Court has to take judicial notice of the facts that, nationalized banks are not offering interest at 9%p.a. even long term F.D.Rs now-a-days. From the settled propositions of law including from the settled expression of the Apex Court in **Raja Priya** supra taking note of steep fall in bank lending rates in the recent past, the interest is awarded at 9%p.a. was reduced to 7.5%p.a. as just and reasonable; though in **Sarla Verma v. Delhi Transport Corporation** ^[23] interest awarded is only at 6%p.a. and in

the latest expression of the three judge Bench of the Apex Court in **Rajesh v. Rajbir Singh**^[—2 4], it is held categorically that it is reasonable to award rate of interest at 7.5% p.a. Hence, the rate of interest is modified to 7½% p.a. uniformly from date of claim petition till realisation instead of 12% p.a. from date of claim petition till date of award and thereafter 6% p.a. till realization as awarded by the Tribunal.

19. Accordingly and in the result, the appeal is disposed of before admission while setting aside the finding of the tribunal on contributory negligence of deceased and car driver equally and held the accident was the result of only due to the rash and negligent driving of car driver however, by not interfering with the quantum of compensation awarded by the tribunal for same is no way excessive, but for modifying the rate of interest from 12%p.a.from the date of the claim petition filed before the tribunal till date of award and thereafter at 6% p.a. till realization, to 7.5% p.a. from date of claim petition till realization uniformly. Rest of the award holds good. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

Date:13.04.2016

Note: L.R.Copy to be marked.

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[\[1\]](#) 2004 (4) ALD (NOC)-313

[\[2\]](#) (2013) ACJ 2141

[\[3\]](#) (2011)5 Scale 240=CIVIL APPEAL NO.6110/ 2011-[Arising out of SLP(C) No.2057/2011]

[\[4\]](#) (2007)ACJ 1284

[\[5\]](#) 1965(1) A11. E.R-563

[\[6\]](#) 1963(2) All.E.R-432

[\[7\]](#) 1969(1)A11.E.R –555

[\[8\]](#) 1995 ACJ 366(SC)-CA Nos.1799 &1800 of 1989 with SLP(Civil) 4586 of 1989

[\[9\]](#) (1999) ACJ 10

[\[10\]](#) (2004) ACJ 448

[\[11\]](#) (2005) ACJ 1441

[\[12\]](#) 1996 ACJ 831

[\[13\]](#) 1994 ACJ 1 SC

[\[14\]](#) 1966 ACJ 57 SC

[\[15\]](#) 1942 AC 601

[\[16\]](#) (2005) 6 SCC 236

[\[17\]](#) (2008) 2 SCC 763

[\[18\]](#) 2002 (1) APLJ 473

[\[19\]](#) 2009 ACJ 69

[\[20\]](#) (2009) 6 SCC 121(2JB)=2009-ACJ-1298

[\[21\]](#) (2013) 9 SCC 65-(3JB)

[\[22\]](#) (2013) ACJ 1403=(2013) 9 SCC 54,

[\[23\]](#) 2009 ACJ 1298

[\[24\]](#) 2013(4)ALT 35(SC)