HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.287 AND 3560 OF 2009

COMMON JUDGMENT:

Former appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the petitioners in M.V.O.P. No.1317 of 2005, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Kurnool (for short 'the Tribunal'), feeling dissatisfied with the award of Rs.8,53,280/- as compensation as against the claim of Rs.18,00,000/- laid by them under Sections 140 and 166 of the Act for the death of one Keelu Ganjallaiah, by the order and decree, dated 29-08-2008; seeking enhancement.

2. Latter appeal is preferred by M/s. Oriental Insurance Company Limited, respondent No.2 in the said MVOP, aggrieved over the award of compensation mainly on the ground that the Tribunal went wrong in granting compensation though, there is no legally acceptable evidence to prove that Ambassador Car bearing registration No.AP 05U-2212 driven by respondent No.1 was involved in the accident and also claiming that the compensation awarded was excessive, sought to set aside the order.

3. The appellants in the former appeal, who are respondent Nos.1 to 6 in the latter appeal, are petitioners, while respondent Nos.1

and 2, who are appellant and respondent No.2 in the latter appeal, are respondent Nos.1 and 2, respectively, in MVOP before the Tribunal.

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

5. The basic facts needed for disposal of the present appeals are that, on 15-08-2005 at about 8.20 a.m., one Keelu Ganjallaiah, who is husband of petitioner No.1 and father of petitioner Nos.2 to 6, left his house on his motor cycle bearing registration No.AP 21F 3552 to attend office duty at Gonegandla village, and having attended to his duty, left the village to Yemmiganur, and when he reached near 30/6 furlong stone on Yemmiganur - Kurnool road, which spot is situate at a distance of three kilometers from Yemmiganur town at about 8.20 p.m., an Ambassador Car bearing registration No.AP 05U 2212 proceeding towards Kurnool side driven by respondent No.1, being owner-cum-driver and insured with respondent No.2 in a rash and negligent manner at high speed, hit the motor cycle, due to which, the said K. Ganjallaiah fell down and sustained a head injury and died instantly.

i) The petitioners claiming that the deceased was 45 years old, working as a Lower Division Clerk (LDC) in Andhra Pradesh Transco at Gonegandla village, earning Rs.12,600/- per month as salary, sought compensation of Rs.18,00,000/- from respondent Nos.1 and 2, who are owner-cum-driver of the Ambassador Car and insurer, respectively.

6. Respondent No.1 remained *ex parte* before the Tribunal.

7. Respondent No.2 filed counter opposing the claim and raising plea that the person driving the car at the time when the accident has occurred was not holding a valid and effective driving license, and its liability is only subject to the proof of negligence of the driver, validity of the driving license, employment of the deceased as driver, compliance of Section 64-B of the Insurance Act and policy conditions by the insured etc.

i) It is stated that in case the Tribunal comes to a conclusion that the petitioners are entitled for compensation and the award is passed against it, to pass an order to recover the same from respondent No.1 for violation of the terms and conditions of the policy.

ii) Lastly, it is stated that the claim of the petitioners is excessive and exorbitant.

8. Subsequently, additional counter was filed by the respondent No.2 raising a plea that the interest claimed by the petitioners is highly excessive and exorbitant, claiming the same from the date of accident is hypothetical, and there is no ground to enhance the claim

by the petitioners, and thereby sought to dismiss the claim petition against it.

9. The Tribunal has framed the following three issues with reference to the contentions put forth by the respective parties about the responsibility for the accident.

> "1) Whether the deceased Keelu Ganjallaiah died in a motor vehicle accident that was occurred on 15-8-2005 at about 8-20 p.m. on account of rash and negligent driving of the driver of car bearing No.AP-05-U-2212 belongs to the first respondent or due to his own negligence?
>
> 2) Whether the petitioners are entitled to claim compensation, if so to what amount and from which of the respondents?
>
> 3) To what relief?"

10. During inquiry, in order to substantiate the claim of the petitioners, the 1st petitioner herself examined as PW.1, besides examining PWs.2 to 5 and marked Exs.A-1 to A-7 and also Ex.X-1. On behalf of respondent No.2, RW.1 was examined and marked Exs.B-1 to B-10.

11. On issue No.1, having elaborately dealt with the documentary evidence Exs.A-1 to A-5 and the evidence of PWs.2,4 and 5 and further analyzing the contents of Ex.B-1 in the light of the evidence of RW.1 and Exs.B-1 to 6 and 10, recorded a definite finding that the Ambassador Car bearing registration No.AP 05U 2212 was driven by respondent No.1at high speed in a rash and negligent manner and hit the motor cycle driven by the deceased

which resulted in the death of deceased and, thus, favoured the petitioners.

12. In order to determine the compensation to which the petitioners entitled, the Tribunal basing on the evidence of PW.3 and the salary particulars as contained in extract of register marked as Ex.X-1 and Ex.A-7, taken the age of the deceased as 43 years since in the service register, the date of birth was recorded as 10-08-1962 and the accident had taken place on 15-08-2005; and taken the carry home salary shown in Ex.X-1 as Rs.6,820/- per month, and deducted 1/3rd there-from and arrived the contribution to the family at Rs.4,546/- per month. Since the Tribunal has taken the age of the deceased as 43 years, perhaps taking the aid of the multiplier mentioned in the II Schedule to Section 163-A of the Act, adopted multiplier '15' and worked out the loss of dependency at Rs.8,18,280/-. Besides the same, towards conventional sums, the Tribunal has granted Rs.15,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.2,500/- towards funeral expenses, making a total compensation of Rs.8,53,280/-. The said amount was awarded by the Tribunal with interest at 7% per annum by apportioning the same among the petitioners with further directions as to withdrawal of their respective shares.

13. The aforesaid order is not only aggrieved the Insurance Company but also the petitioners and, thus, both these appeals came to be filed.

14. The appellants - petitioners in MACMA No.287 of 2009 would contend that the Tribunal ought to have taken the gross salary, but not the carry home salary and also ought to have taken the future prospects culling out from the evidence of PW.3, and ought to have granted the entire amount of Rs.18.00 lakhs and, thus, sought to allow the appeal.

15. The Insurance Company raised the grounds that the Tribunal completely deviated in appreciating the evidence on record and ordered compensation though, the evidence on record would prove that it was a hit-and-run case, and that the vehicle driver and others have been planted for the purpose of the case. It is stated that the Tribunal, somehow, overlooked to see the delay that occurred in lodging the complaint and the non-examination of complainant.

16. Heard Sri J. Janaki Rami Reddy, learned counsel for the appellants - petitioners in the former appeal and respondent Nos.1 to 6 in the latter appeal, and Sri Ravi Shankar Jandhyala, learned counsel for respondent No.2 in the former appeal and appellant in the latter appeal. Despite service of notice on respondent No.1 in the former appeal and respondent No.7 in the latter appeal, none appears for him.

17. Perused the order and the material on record, both, oral and documentary, let in by the parties.

18. In view of rival contentions in the present appeals, the following points require adjudication:

i) Whether Ambassador Car bearing registration No.AP 05U 2212 did involve in the accident causing death of the deceased K. Ganjallaiah?

ii) Whether the compensation determined by the Tribunal is fair and adequate? And if not, to what amount the petitioners are entitled?

iii) To what other relief?

Point No.1:

19. Admittedly, Ex.A-1, certified copy of first information report was registered at 6.00 a.m. on 16-08-2005. It was registered basing on the complaint lodged by one K. Suresh Babu, son of K. N. Satya Raju. Further, the complaint does not disclose the name of the offender and the type of vehicle, which hit the motor cycle of the deceased. The contents in Ex.A-1 would also show that the complainant was actually travelling in an RTC bus and the bus was stopped at the place of accident as the driver found a person lying down with injuries and he travelled in the same bus again and he informed his relations, and in an auto-rickshaw all of them came to the place of occurrence and since it was late in the night, they could

not reach the police station and only in the early hours of next morning he lodged the said complaint.

i) It is true as contended by the learned counsel for respondent No.2 that Ex.A-1 does not disclose the name of respondent No.1, nor the type of the vehicle i.e., the vehicle which respondent No.1 has driven as owner of the vehicle. Now, the finding recorded by the Tribunal on this aspect of the case requires advertence and, thereafter, a scrutiny of the evidence in deciding whether that finding recorded by the Tribunal is based on appreciation of evidence and well reasoned or warrants interference.

ii) The Tribunal has elaborately discussed the evidence of PWs.2, 4 and 5 and the documentary evidence through Exs.A-1 to A-6 exhibited on behalf of the petitioners and Exs.B-1 to B-10 exhibited on behalf of respondent No.2 - Insurance Company in recording the finding that the vehicle of respondent No.1 was involved in the accident and that, that vehicle was being driven by respondent No.1 at the relevant time. The Tribunal has made thorough scrutiny of probabilities derived from the evidence of relevant witnesses from the circumstances culled out from the documentary evidence. It is needless to look at the reasons assigned by the Tribunal in arriving at such a finding, as at the outset, it appears to be well-reasoned and based on appreciation of evidence on record in accordance with evidentiary rule.

iii) However, this being the first appeal, re-appraisal of evidence on record is also a necessary requirement. Therefore, when examined the evidence of PWs.2, 4 and 5, certainly, it is difficult to hold that the finding recorded by the Tribunal is not based on proper reasoning. It would be appropriate to extract the answer given by PW.4, the Sub-Inspector of Police, who laid the charge sheet clutching respondent No.1 as an accused for the offence punishable under Section 304A IPC. In the cross-examination of this witness, the learned standing counsel for Insurance Company elicits an answer thus:

> "I cannot say whether the crime vehicle an ambassador car while coming from the main road from Yemmiganur to Kurnool at first dashed to the deceased and again went towards right and hit to the mile stone."

The witness volunteered stating thus:

> "Witness adds that I am not author of rough sketch."

The very suggestion made to PW.4 would, in fact, condemn the stand taken by the Insurance Company that the witnesses and the vehicle are planted by the petitioners in active connivance with the police authorities to claim compensation. The very stand put-forth by the Insurance Company appears to be artificial and unnatural in view of the fact, that 'active connivance' or 'collusion' is only attributed to the beneficiaries and police official, but not to respondent No.1. It is really strange and un-understandable that respondent No.1, being the driver of the vehicle besides being the owner of the vehicle also, would, in fact, join hands with the petitioners and the police officials in a case where the offence is one punishable under Section 304A IPC, which provides the sentence of imprisonment extending up to two (02) years. Certainly, a person with ordinary prudence would never come forward to implicate himself in a false case unless there is some material on record to show that with an ulterior motive to make wrongful gain, he did so.

iv) The only circumstance on which much stress is laid by the learned standing counsel for Insurance Company is, that the complainant, who, though, related to the petitioners, having lodged the complaint, did not step into box and, thus, the inference is that with a view to screen himself from a searching cross-examination in order to conceal the truth, he did so. This circumstance, no doubt, when viewed, in the context of illustration (g) to Section 114 of the Indian Evidence Act, 1872, would apparently give an impression that there may be truth in the submission made. But, when examined intrinsically, certainly, that cannot overweight the evidence on record through PWs.2, 4 and 5. It is highly inconceivable, that the police officials examined as PWs.4 and 5 would implicate respondent No.1 as an accused by planting the Ambassador car only to face serious consequences that would flow even risking their job. Therefore, no further probe is required to hold that the Ambassador car bearing registration No.AP 05U 2212, unless involved in the accident was driven, at the relevant time, by respondent No.1, being the owner of the vehicle, certainly, it would not have reached its logical conclusion of investigation in showing him as an accused for the offence punishable under Section 304A IPC. On the other hand, certain answers given by RW1, in his cross-examination, would completely condemn the stand put forth by the Insurance Company. He admits in his cross-examination concerning Ex.B-7, the deposition of PW.7 in C.C.No.252 of 2005 thus:

> "It is true that Ex.B-7 the deposition of PW-7 M.Siva in C.C.No:252/2005 stated that the driver of ambassador car bearing No:AP-05U-2212 drove the same in a high speed."

Similar answers were given by him in regard to Ex.B-4 - the deposition of PW.4, Ex.B-8 - deposition of PW.11 in the said calendar case.

v) Thus, the finding recorded by the Tribunal on issue No.1, certainly, would not suffer from any legal infirmity as it is not only well-reasoned, but based on appreciation of evidence on record. Even, the certified copies of depositions tendered by the witnesses marked as Exs.B-2, 5, 6, 9 and 10 would not aid the case of Insurance Company.

Hence, this point is held in favour of the appellants in the former appeal.

Point No.2:

20. Turning to whether the compensation awarded by the Tribunal is fair and adequate in terms of Section 166 of the Act, the

income taken by the Tribunal, the age of the deceased, the multiplier factor and the loss of dependency worked out having deducted 1/3rd towards personal expenses and the conventional sums awarded by the Tribunal were referred to hereinbefore.

i) The law is well settled that in case of a salaried employee, it is not the carry home salary or the net salary that has to be considered for reckoning the loss of dependency, but the gross salary minus statutory deductions that has to be taken for the purpose of determining the compensation applying the relevant multiplier factor. The authorities, if needed, are in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] and **Rajesh and others v. Rajbir Singh and others**[2] rendered by the Hon'ble Supreme Court.

ii) Admittedly, the deceased was 43 years old, as there is clinching evidence on record through PW.3 to show the date of birth recorded in service register and the date of accident forthcoming from the facts in the present case. Therefore, the relevant multiplier factor as per the table formulated by the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) is '14' but not '15' which is mentioned in the II Schedule to Section 163-A of the Act.

ii) What would be the permissible deduction is well set out in **Sarla Verma's Case** (Supra 1). The petitioners herein, who are the dependants on the deceased, are numbering six (06). Therefore, 1/4th

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[1]. (2009) 6 Supreme Court Cases 121
[2]. 2013 ACJ 1403

deduction is permissible as against 1/3rd deduction made by the Tribunal towards personal expenses of the deceased.

iii) Turning to the contribution made by the deceased to the family, the evidence of PW.3 and the salary particulars marked as Exs.A-7 and Ex.X-1 are relevant. Ex.A-7 shows the gross pay of the deceased as Rs.12,669/-; recoveries as Rs.5,849; and net pay as Rs.6,820/-. The pay and recoveries as shown in Ex.A-7 as on 15-08-2005, on which day, the accident and death of the deceased occurred are thus:

“ Payments		Recoveries		
Pay	Rs.9710.00	GIS	Rs. 15.00	
DA (14.628%)	Rs.1420.00	GPF	Rs.3000.00	
HRA (12.5%)	Rs.1214.00	GPF(I)	Rs.1400.00	8/20
Medical Bill	Rs. 200.00	LIC	Rs.1334.00	
Cycle Allowance	Rs. 125.00	P.TAX	Rs. 100.00	
Gross Pay	Rs.12669.00	Total Recoveries	Rs. 5849.00	
Less Recoveries	Rs. 5849.00			
Net Pay	Rs.6820.00 ”			

Ex.X-1 also shows, the dues were cleared as the deceased appears to have taken loans, which were to be paid to the wife of the deceased towards death benefits. From the salary, the amount of Rs.100/- towards professional tax and cycle allowance of Rs.125/- have to be deducted. Therefore, the amount of Rs.225/- when deducted from the salary of Rs.12,669/-, the reminder would be Rs.12,444/-. Thus, the annual income of the deceased works out to Rs.1,49,328/-.

iv) It is no doubt true, in the cross-examination of PW.3, the witness admits that the deceased did not pass the departmental tests to qualify himself for further promotion in the category of Upper Divisional Clerk (UDC). But, he has volunteered that there was no bar for writing the departmental tests any number of times. Even otherwise, there would be periodical pay revisions and annual increments, besides Dearness Allowance being hiked for every six months. Thus, in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) **Rajesh's Case** (Supra 2), when kept in view, the age of the deceased being 43 years, the petitioners are entitled to 30% of the amount towards future prospects. Thus, 30% of the loss of dependency would come to Rs.44,798.40ps. and rounding it off to Rs.44,798/- [30% of Rs.1,49,328/-]. Thus, the total loss of dependency, which includes future prospects, to which, the petitioners are entitled to Rs.1,94,126/- [Rs.1,49,328/- + Rs.44,798/-]. Since it is not forthcoming whether any income tax was paid by the deceased as PW.3 maintains silence, in view of the decision of the Hon'ble Supreme Court in **Kanhsingh v. Tukaram**[3], 10% towards income tax has to be deducted which works out to Rs.19,412.60ps. and rounding it off to Rs.19,413/- and when the same is deducted from the annual income of Rs.1,94,126/-, it works out to Rs.1,74,713/- towards loss of dependency.

[3]. 2015 ACJ 594

v) As mentioned in the above, 1/4th deduction there-from is permissible towards personal expenses of the deceased which works out to Rs.43,678.25ps. and rounding it off to Rs.43,678/-. When the amount of Rs.43,678/- is deducted from the annual income, the remainder, Rs.1,31,035/- was the contribution to the family. The multiplier factor is '14' and, therefore, when the same is applied, the loss of dependency works out to Rs.18,34,490/- [Rs.1,31,035/- x 14]. This apart, the petitioners are also entitled towards conventional sum of Rs.50,000/- as against the amount of Rs.35,000/- granted by the Tribunal. Thus, the petitioners are entitled to Rs.18,84,490/- [Rs.18,34,490/- + Rs.50,000/-] as compensation. Accordingly, this point is answered.

Point No.3

21. Though the claim in the present case made for award of Rs.18,00,000/-, the petitioners are entitled to Rs.18,84,490/- as compensation as against the amount of Rs.8,53,280/- granted by the Tribunal which exceeds the claim made by the petitioners. But, in view of the decisions of the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[4], **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[5] and **Rajesh's Case** (Supra 2), the amount determined towards fair and adequate compensation cannot be deprived of the same.

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4. AIR 2003 SC 674
5. 2012 ACJ 191 (SC)

22. The rate of interest awarded by the Tribunal was at 7.5% per annum. Since the same is in accordance with the rate of interest granted by the Hon'ble Supreme Court in **Rajesh's Case** (Supra 2), the same is maintained, and on the enhanced amount also, the interest at 7.5% per annum from the date of petition till realization is awarded.

23. In the result, the appeal in MACMA No.287 of 2009 is allowed and appeal in MACMA No.3560 of 2009 is dismissed. The order and decree, dated 29-08-2008, in M.V.O.P. No.1317 of 2005, passed by the Tribunal are modified enhancing the compensation to Rs.18,84,490/- (Rupees eighteen lakhs eighty four thousand four hundred and ninety) from Rs.8,53,280/- with interest at the rate of 7.5% per annum thereon which was also the rate of interest granted by the Tribunal from the date of petition till realization. The apportionment among the petitioners would be in accordance with the apportionment made by the Tribunal. The petitioners are directed to pay court fee on the amount granted more than the claim within three months from today. No order as to costs.

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

A. SHANKAR NARAYANA, J

August 01, 2016.
Mgr