

**THE HON'BLE JUSTICE SMT. T.RAJANI**

MACMA. No.287 of 2008

%27.02.2017

# Prahallad Rathod

...Appellant

VERSUS

\$ K.Vittal and another

...Respondents

< **GIST:**

> **HEAD NOTE:**

**!Counsel for Appellant: Sri K.M.Mahender Reddy**

**^Counsel for 1<sup>st</sup> Respondent: Sri S.Surender Reddy**

**^Counsel for 2<sup>nd</sup> Respondent: Sri K.Krishna Kumar Reddy**

**? Cases referred**

**1. (2008) 7 Supreme Court Cases 613**

**2. LAWS (KAR)-2011-10-9**

**3. 2006 Law Suit (Guj) 550**

**4. (2009) 6 SCC 121**

**5. 2007 ACJ 830**

**THE HONOURABLE JUSTICE SMT. T.RAJANI****MACMA. No.287 of 2008****JUDGMENT:**

The appellant herein is the petitioner in O.P. No.633 of 2004 on the file of the Motor Accidents Claims Tribunal (District Judge), at Nizamabad. He preferred the present appeal assailing the award of the Tribunal, importantly on the ground that the Tribunal failed to award the medical expenditure as incurred by the appellant, which is to an extent of Rs.23,920/- on the ground that as per the provision of 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') only Rs.15,000/- can be awarded towards medical expenses. The appeal is also on the grounds that the Tribunal did not consider the fracture injuries and did not appreciate that huge expenditure would be incurred for the treatment of the same.

In the foremost, the observation of the Tribunal that under Section 163-A of the Act medical expenses only to an extent of Rs.15,000/- can be granted, can be met with, with the help of rulings furnished by the counsel for the appellant and the other rulings. The ruling in the case of **SAPNA Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER**<sup>1</sup> is to the effect that deviation from Second Schedule can be made in appropriate cases. The said aspect is dealt with under para 11 of the judgment, which runs as follows:

“It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of

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<sup>1</sup>. (2008) 7 Supreme Court Cases 613

compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.”

Ruling of the Hon’ble High Court of Karnataka reported in the case of **REGIONAL MANAGER NEW INDIA ASSURANCE CO.LTD Vs. VIJAY BALSHIRAM WALUNJ**<sup>2</sup> relied upon the first mentioned ruling in order to deviate from the Second Schedule of the Act. The ruling of Hon’ble High Court of Gujarat reported in the case of **JAVATIBEN BHUPSINHIJI Vs. NARPATSINH BHUPSINHJI**<sup>3</sup> is also relied upon. Apart from the above rulings, the following rulings also can be taken support of with regard to the second schedule being applied to the cases beyond the income of Rs.40,000/-. The decision of the Supreme Court in **SARLA VERMA Vs. DELHI TRANSPORT CORPORATION**<sup>4</sup> explains the same in the following words:

“The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under [section 163A](#) of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-.”

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<sup>2</sup>. LAWS (KAR)-2011-10-9

<sup>3</sup>. 2006 Law Suit (Guj) 550

<sup>4</sup>. (2009) 6 SCC 121

The decision of this High Court in **P. ANNAMMA v. N.N.A.PATRICK**<sup>5</sup> can further be taken help of, wherein it was held in paras 21 and 22 as hereunder:-

“**21.** Therefore, it is clear that the multiplier method is the legally well established method in granting compensation and the Table given under the Second Schedule appended to the Act can be taken for guidance for applying the multiplier for claim petitions under section 166 of the Act, even for those whose annual income exceeds Rs.40,000/- per annum. Further, a learned single Judge of this court in K. Matura Bai v. A. Shiva Nageswar Rao, 2006 ACJ 1341= 2004 (4) ALT 304, considering the structured formula given in Bhagwan Das case, 1987 ACJ 1052 (AP), in the light of various judgments of the Supreme Court and the High Courts, held as here under:

18...Be it the case of assessment of compensation under section 163-A or assessment of the compensation under section 166, the multiplier in the structured formula as given in the Second Schedule appended to the Act being the statutory provision shall have to be followed. A fortiori the multiplier Table as given in Bhagwan Das case, 1987 ACJ 1052 (AP), having not been updated so far, there is no option for the Tribunal except to follow the statutory multiplier as given in the structured formula. Deviation is permissible from these multipliers as held by the judgments of the Apex Court only in proper cases and under compelling circumstances. The legal position thus appears to be obvious from the concatenation of the cases discussed hereinabove.”

The above legal position makes it clear that a deviation from the Second Schedule can be made in appropriate cases. Law got settled by now, that the Second schedule is a guiding calculation and not a formula which intends to deprive the victims of motor accidents of their legitimate compensation, by import of a construction that the figures specified therein prescribe an upper limit.

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<sup>5</sup> 2007 ACJ 830

In this case, the appellant sustained five fracture injuries all of which are on the legs and in that background the medical expenditure incurred by the appellant, which is Rs.23,920/- seems to be very reasonable. Hence, the said amount can be awarded towards medical expenditure incurred by the appellant.

With regard to the amounts awarded under the other heads this Court finds that they are also on the low side. The Tribunal awarded Rs.5,000/- towards each of the fracture injuries, which can be enhanced to Rs.10,000/- towards each of the fracture injuries. The Tribunal did not award compensation under any other heads. In the light of the fact that the appellant sustained fractures to both the legs, this Court is of the opinion that he might have required special transportation while going to and from the hospitals. Hence Rs.15,000/- can be awarded under the head of transportation and incidental expenditure.

The Tribunal discussed the evidence of P.W.2, who spoke about the disability sustained by the appellant but did not give any finding on the said aspect. A reading of the evidence of the P.W.2 would show that the nature of the disability is not stated by him. He only stated that the appellant sustained permanent partial disability, without specifying the nature of such disability. However, the evidence of P.W.3, which is that of the Doctor, who treated the appellant shows that a surgery was conducted for removal of fixture and that the injuries were not completely healed by the date of discharge. He also stated that movements of both the knees of the appellant are restricted due to which he cannot sit, squat and walk without crutches. The disability certificate is marked as C-3 and C-4 is the discharge card issued by Sri Guru Govind Singh Ji Memorial Hospital, Nanded. Hence, it can be said that the nature of the disability as stated by P.W.3 would result in loss of future amenities of life for which Rs.30,000/- can be awarded.

The income of the appellant as stated by him is Rs.3,000/- per month which he was earning by selling vegetables. The said income seems to be not exaggerated and can be accepted. The nature of the injuries would suggest that the appellant might have been on treatment rest and recovery for a total period of three months and considering the same Rs.9,000/- is awarded under the head of loss of earnings during the period of treatment rest and recovery. The disability would also result in loss of future income to the appellant if his nature of work involves sitting, squatting and walking. P.W.1 did not elaborate on the nature of his work except simply stating that he sells vegetables. Hence, this Court is unable to assess the loss of future income in exact terms. But having accepted that there is some disability which resulted in restriction of movements of both knees, this Court is inclined to award a lumpsum amount towards loss of future income which can be Rs.50,000/-. Hence, in all an amount of Rs.1,77,920/- rounded off to Rs.1,78,000/- is awarded. To that extent the appeal is allowed and the award of the Tribunal stands modified.

In view of the above, this appeal is partly allowed. As a sequel miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

**JUSTICE SMT. T.RAJANI**

**Date: 27-02-2017**

Note: L.R. to be marked.  
B/o.  
LSK