

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. Nos.816 of 2010 and 2498 of 2011

COMMON ORDER :

M.A. C.M.A. No.816 of 2010 :

The Insurance Company, who is respondent No.2 in the O.P.No.1389 of 2006, aggrieved by the Award and Decree dated 6.1.2010 in O.P.No.1389 of 2006, preferred this appeal contending that the claimants have not established the involvement of lorry bearing No.KA 38 3471 and that the document filed by the claimants are self-contradictory, as according to Ex.A7, the DCM van hit the motorcycle and according to Ex.A10, the deceased himself hit to a tree, but the claimants have not explained the discrepancy of the documents and the evidence of P.W.1. It is further contended that the evidence of P.W.2 cannot be believed as he stated that the police visited the spot immediately after receiving the complaint. In fact, the complaint itself has been given after 15 days, so as to how they reached the spot and how the vehicle is lying on the spot for 15 days on the road is not explained. P.W.2 is a friend of the deceased, hence his evidence cannot be relied.

M.A. C.M.A. No.2498 of 2011 :

Per contra, claimants preferred counter claim in the same O.P. No.1389 of 2006 contending that the Tribunal failed to consider the evidence of P.Ws.1 and 2 with regard to the accident and also

monthly income of the deceased. Instead of considering the monthly income at Rs.4,000/- per month, it fixed at Rs.2,000/- per month which is arbitrary and wrong. The Tribunal also failed to consider the dependency of these appellants/petitioners and they claim the amounts as claimed in the O.P.

2. The claim in brief is that the deceased Jeethaiah was 30 years old and as a private employee he used to earn Rs.4,000/- per month and the entire amount was used to spend for the maintenance of petitioners/claimants.

While so, on 4.8.2005 while the deceased was proceeding on his TVS motorcycle bearing No.AP 28 BC 395 at about 7 PM when they reached near KJR weigh bridge at Bachupally, one lorry tanker bearing No.KA 38 3472 belonging to the 1st respondent, driven with high speed in rash and negligent manner, hit the deceased from behind.

In the accident he sustained simple and grievous injuries and immediately he was shifted to Remedy Multi Speciality Hospital at Kukatpally, later to NIMS, Panjagutta, Hyderabad. After discharge, while undergoing treatment, he succumbed to injuries on 17.8.2005 at home.

3. The owner/1st respondent remained *ex parte*. The 2nd respondent/appellant filed counter disputing the very accident,

involvement of the tanker lorry, death, his age, income and occupation and also relationship of petitioners/claimants with the deceased.

4. The 2nd respondent further contended that the accident was occurred due to the fault of the deceased himself, hence the respondents are not liable to pay the compensation. It is further contended that the driver of the lorry does not possess valid and effective driving licence at the time of the accident. Since the accident was on 4.8.2005 and death was on 17.8.2005, about two weeks after the accident, the deceased cannot be said to have died of injuries suffered in the accident and consequently petitioners cannot claim compensation. The claim is excessive.

5. The Tribunal, after hearing and after considering the pleadings of both parties, settled the following issues for trial :

- (1) Whether the pleaded accident occurred resulting in the death of the deceased involving the tanker lorry bearing registration No.KA 38 3472?
- (2) Whether the accident occurred due to the fault of the driver of the tanker lorry No.KA 38 3472 or the deceased himself and if both are responsible what is the responsibility of each of them for the accident?
- (3) Whether the tanker lorry No.KA 38 3472 belongs to the 1st respondent and stood insured with the 2nd respondent on the date of the accident and if so whether it covers the risk of the deceased?
- (4) Whether the petitioners are in principle entitled to compensation and if so to what amount and what is the liability of respondents?
- (5) To what relief?

In support of the claim of petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A10 were got marked. On behalf of respondents, none were examined and Ex.B1 was got marked.

6. Now, the point that arises for determination is :

“Whether the order of the Tribunal suffers from legal infirmities warranting interference in the appeal?”

7. For the sake of convenience, the insurance company which is appellant in M.A. C.M.A. No.816 of 2010 is referred as appellant and claimants as respondents.

8. Learned counsel for the appellant contended that the trial Court failed to consider the discrepancy in the documents in Exs.A7 and A10 read with the evidence of P.Ws.1 and 2.

9. *Per contra* the claimants/respondents contended that the lorry tanker bearing No.KA 38-3472 is involved in the accident and there is no such discrepancy and further the accident is due to rash and negligence of the driver of the said lorry tanker, whereas the appellant's contention is that the accident was due to the deceased himself and there was no negligence on the part of the driver of the offending lorry.

10. Arukala Devi, wife of late A.Jeethaiah (deceased) filed the evidence affidavit as P.W.1. During cross-examination she admits that she is not an eyewitness to the accident and only after came to know about the accident, she went to the Remedy Hospital and saw her husband-injured. Therefore, her evidence is of no use for adjudication of rash and negligence and involvement of the vehicle, but her evidence is relevant to establish the other material aspects.

The claimants, in order to prove the rash and negligence, examined U.Laxman, who is eyewitness to the accident, as P.W.2 and whose evidence affidavit was filed and the same was subjected to cross-examination.

11. The evidence of P.W.1 is that petitioners 2 and 3 are aged about 8 years and 7 years respectively who are minors and by the date of accident, they are prosecuting studies. The clinching evidence of P.W.1 is that on 4.8.2005 her husband late Jeethaiah left the home to go to Miyapur on his TVS XL No.AP 28 BC 395 and to that extent her evidence is relevant.

12. Now, coming to the evidence of P.W.2, he is an eyewitness to the accident, his evidence is that on 4.8.2005 at 7.00 PM after completion of his duty while he was returning to home at Mallampet Village and when reached near KJR weigh bridge, Bachupally village limits, R.R.District, he saw A.Jeethaiah was proceeding on his TVS XL bearing No.AP 28 BC 395 on the road slowly towards Miyapur, in the meantime, one tanker lorry bearing No.KA 38-3472 came with high speed without following traffic rules in rash and negligent manner driven by its driver and dashed Jeethaiah from back side, due to which, he fell down on the road and received grievous injuries, fractures on both legs and became unconscious.

13. During the cross examination, he clarified that at that time PW.2 was proceeding on motor cycle and the TVS XL vehicle was proceeding ahead of him. Lorry came from the behind of PW.2

and took over him and after over taking him, lorry hit against the TVS vehicle at a distance of 15 ft. from him and it is a tanker lorry. The material suggestion of PW.2 is that he could see the accident as lorry was ahead of him. The right side head light of the lorry hit against TVS XL vehicle. Admittedly, after discharge from the hospital, Jeethaiah died on 17.8.2005 at 10.00 PM at his home.

14. According to the case of the claimants, the accident occurred on 4.8.2005 at 7 PM and the complaint was presented on 18.8.2005.

15. Admittedly, after discharge from the hospital, Jeethaiah died on 17.8.2005 at 10.00 PM at his home. Ex.A1 is the copy of FIR in Crime No.185/2005 dated:18.8.2005 presented by the father-in-law of the deceased-A. Jeethaiah, wherein it is asserted that the driver of the tanker lorry bearing No.KA-38-3472 hit behind the TVS XL bearing No.AP.28-BC-395, due to which, he got head injury. PW.2-U. Laxman is cited as 4th witness in Ex.A.2-charge sheet. PW.1-A. Devi (widow of deceased) immediately after came to know about the accident, she along with her father rushed to Remedy Hospital, Kukatpally, where she saw her husband was unconscious with head injury and grade-II compounded fractures on left leg tibia and fracture on right leg and multiple injuries on abdomen and after some treatment, the Doctors in Remedy Hospital advised to shift the patient to Government Gandhi Hospital or Osmania General Hospital for further management. Thereafter, they shifted A.Jeethaiah to Nizam's

Institute of Medical Sciences, Hyderabad, (for short, NIMS) on the same day and admitted as inpatient and discharged on 09-8-2005 from NIMS Hospital and while undergoing treatment, Jeethaiah died on 17.8.2005 in the night at about 10'0 clock. The evidence of P.Ws.1 and 2 is read together with Ex.A1-copy of FIR and Ex.A2-charge sheet. The Investigating Officer, after thorough investigation, filed charge sheet against the driver of the tanker lorry bearing No.KA-38-3472 finding that the accident was due to rash and negligent driving of the driver of tanker lorry. PW.2 is the eye witness as per charge sheet. In Ex.A1 against column No.12, it is specifically mentioned that Jeethaiah sustained injuries in the accident involving tanker lorry bearing No.KA-38-3472 as its driver drove the lorry in rash and negligent manner and hit the TVS XL of the deceased-A.Jeethaiah. After discharge from NIMS, Jeethaiah died on 17.8.2005 at 10.00 PM and Ex.A1-FIR was presented on 18.8.2005 at 8.30 hours. The circumstances clearly go to establish that the accident occurred involving tanker lorry bearing No.KA-38-3472. A. Jeethaiah, immediately after the accident, was admitted in Remedy Hospital on 4.8.2005 and as per Ex.A6-Out-Patient Card the patient was brought to Casualty at 8.00 PM by the Dundigal Police Constable No.3048 with head injury RTA in collision with lorry at Bachupally at 7.00pm on 4.8.2005. Ex.A6 further goes to suggest that the patient being referred to Gandhi / Osmania General Hospital, for further management.

16. Further, it is also the evidence of PW.1 that her husband was referred to Gandhi / Osmania General Hospital, but he was admitted in NIMS. Ex.A7 is the Out Patient card of NIMS (Emergency Medicine Department), according to which, he was admitted in NIMS on 4.8.2005 with O.P.No.50801981. After payment of Rs.15,000/- against the clinical history of the case, doctor noted that patient, while driving, was hit by DCM van near IDL Bolarum on 4.8.2005 at 7.30p.m. It is also noted that patient was drowsy and semi-conscious. PW.1 in his evidence stated that at the time they reached hospital, her husband was unconscious. Ex.A10 is the discharge record of NIMS wherein it is mentioned that patient is drowsy but comprehending. In Ex.A10 it is also mentioned against clinical summary that, alleged to have sustained RTA on 4.8.2005 at 7.00 pm when the scooter which he was riding was hit by a two wheeler coming from opposite direction at Bolarum, Hyderabad. So, there is difference in Exs.A7 and A.10 with regard to involvement of the vehicle. Exs.A7 and A.10 are the documents issued by NIMS. The material on record clearly shows that patient was unconscious when he reached Remedy Hospital and at the time when he shifted to NIMS on the same day, when he was examined on 5.8.2005, patient was drowsy and semi-conscious. So, the patient informing the hospital authorities about the involvement of the vehicle does not arise. To clarify the discrepancy, there is the evidence of the Doctor who recorded in Exs.A7 and A.10 about the involvement of DCM van. PW.1 is the author of Exs.A7 and A.10. It is PW.2 who is eye

witness to the accident who specially stated that tanker lorry bearing No.KA-38-3472 is involved in the accident and crossing tanker lorry, Jeethaiah was proceeding on his TVS XL at a distance of 15 ft. It is also the evidence of PW.2 that after the accident, Anantha Swamy informed over telephone to uncle of deceased but some persons and police constable shifted the injured-Jeethaiah to Remedy Hospital, Kukatpally. Shifting of patient by the Police Constable is recorded in Ex.A6-Out Patient card of Remedy Hospital. That, it is no one's case that Jeethaiah was hit by DCM van. From the beginning itself, it is the case of claimants that tanker lorry bearing KA-38-3472 hit TVS XL driven by the deceased Jeethaiah, at the time of accident.

17. Respondent No.2 (in O.P. No.1389 of 2006) filed counter as well as written arguments before the Tribunal and there is no plea either in counter or in written arguments that the TVS XL was hit by DCM Van. But in the written arguments, it is stated that in Ex.A7, it is mentioned that the TVS XL was hit by DCM van and in the discharge summary while the deceased was driving scooter was hit by another three wheeler. To contradict the evidence of PW.2, respondent No.2 did not adduce any oral or documentary evidence and there is no suggestion with regard to discrepancy of the vehicle involved in accident, either to PW.1 or PW.2 in respect of Exs.A7 and A.10.

18. In the facts and circumstances discussed above and having marshalling the facts, both oral and documentary evidence of

PWs1 and 2 and Exs.A1 to A3 and also Exs.A7 and A.10, I am of the considered view that the Tribunal, having considered the oral and documentary evidence, rightly came to conclusion that as per Exs.A1 and A2, while A.Jeethaiah was travelling on his TVS XL-two wheeler bearing No. AP 28 BC-395, when reached near KJR weigh bridge at Bachupally, the tanker lorry bearing No.KA 38-3472 came in high speed in rash and negligent manner and hit the motor cycle from behind and PW.2 is the direct eye witness to the accident. The driver of the lorry himself surrendered before the police. Ex.A1-FIR was submitted by father-in-law of deceased on 18.8.2005 ie., after death on 17.8.2005 at 10.00pm. The Tribunal gave a clear finding that there is a delay of 15 days in giving report to the police. It should be noted that when a person is hit by vehicle and he is shifted to hospital, relatives of such person may be in confusion state of mind and could not thought of giving report to the police especially when the deceased was alive. Added to this, the record was filed by the claimants soon after receiving report of the responsible police officer who investigated into the matter and the Tribunal came to conclusion that deceased was hit by tanker lorry as noted in Ex.A1-FIR and the investigating officer, after investigation, found involvement of tanker lorry in accident and as alleged in Ex.A2-charge sheet and inquest report-Ex.A3 also it is opined that tanker lorry was involved in accident. Further found that the evidence shows that tanker lorry was at fault, non-filing of license does not make any difference and ultimately found that tanker lorry bearing No.KA 38-3472 is

responsible for the accident. PWs.1 and 2 supported by Exs.A1, A2 and A3 clearly established that Jeethaiah was hit by tanker lorry No.KA-38-3472 and as per Ex.A6-Out patient card with discharge summary go to suggest that immediately after accident, Jeethaiah was admitted in Remedy Hospital on 4.8.2005 and for better management, the Remedy Hospital authorities referred him to Gandhi/Osmania General Hospital. But A. Jeethaiah was admitted in NIMS as per Ex.A7 on 4.8.2005 and he was examined by Doctor on 5.8.2005. Jeethaiah was discharged from hospital on 09.8.2005 and while undergoing treatment, as per Ex.A10, he died on 17.8.2005 at 10.00pm. The inquest report under Ex.A3 opined that due to injuries sustained in the accident involving in tanker lorry, Jeethaiah succumbed to injuries. The Doctors who conducted post-mortem on 18.8.2005 under Ex.A4 recorded against column No.10 as –Bleeding from nose present. It is further mentioned at column No.10, (1) External injuries – fracture left parietal bone of skull, irregular, closed vertical in direction above the left ear about 5 inches. (2) Fracture right leg middle 1/3 both bones open present and (3) Internal : Brain showed subdural haematoma left parietal region of 6 x 3 inches in size. Ultimately, on examination, opined that cause of death is due to head injury.

19. The Tribunal, having considered documentary evidence and the evidence of PWs.1 and 2 rightly came to conclusion that respondent No.2 should have taken steps to summon the concerned

investigating officer and it should have elicited information that the deceased was not hit by tanker lorry mentioned by the claimants, but he did not take any such steps. On the other hand, the record placed before the Tribunal would show that the accident occurred involving tanker lorry bearing No.KA-38-3472. In Ex.A4-PME report, it is specifically mentioned that Jeethaiah suffered External injuries – fracture left parietal bone of skull, irregular, closed vertical in direction above the left ear about 5 inches. (2) Fracture right leg middle 1/3 both bones open present and (3) Internal : Brain showed subdural haematoma left parietal region of 6 x 3 inches in size and he died of head injury and the doctor opined the cause of death as head injury. Even in Ex.A6-out patient card of Remedy Hospital also it is mentioned that Jeethaiah sustained major injuries on left parietal laceration 6x4 inches, left lower limb tibia plus SAH + SDH with midline shift. Ex.A.10-discharge summary of NIMS, confirmed the same injuries. It is a fact that accident occurred on 4.8.2005 whereas, Jeethaiah died on 17.8.2005 at 10.00pm while undergoing treatment after discharge from NIMS on 09.8.2005. The medical evidence under Ex.A4-PME report and inquest report under Ex.A3 and the averments in Exs.A1 and A2 clearly show that death of deceased was due to injuries sustained.

20. The Tribunal has rightly held that in view of medical advancement, it is quite possible that the treatment given to the injured may keep him alive for some time despite severity of the injuries, but

in course of time, the same may result in death. In the given circumstances, I am of the considered view that the finding of the Tribunal that there is nexus between accident and death is tenable.

21. With regard to driving license as already discussed above since the accident was due to rash and negligent driving of the driver of tanker lorry No.KA-38-3472, the deceased is no way responsible and in the absence of any such rebuttal evidence, the finding of the Tribunal that non-production of driving license of the deceased is not fatal and Respondent No.2 failed to establish that driver of tanker lorry bearing No.KA-38-3472 does not possess valid and effective license is untenable. The claimants contention is that the Tribunal erred in considering the income of the deceased at Rs.2,000/- per month whereas, the evidence on record shows that he was earning an amount of Rs.4,000/- per month.

22. Further, there is no rebuttal evidence produced by respondent No.2. When the respondent Insurance Company took serious objection that there is discrepancy with regard to involvement of tanker lorry as per Ex.A7-Out Patient card of NIMS, it is the DCM Van and according to Ex.A10-discharge summary of NIMS, it is three wheeler, the proper person to explain is the Doctor who made entries in the accident register-Medico Legal Case record. That, the Insurance Company without examining any of them merely took a plea that claimants failed to clarify the discrepancy in the oral evidence of P.Ws.1 and 2 and Exs.A7 and A10. Though there is a

delay of 15 days in lodging FIR under Ex.A1, the police investigated into the offence and filed charge sheet under Ex.A2 against driver of the tanker lorry. The certified copy of the FIR is marked as Ex.A1 and the certified copy of the charge sheet is marked as Ex.A2 which clearly indicate that the police after making thorough investigation into this case, came to conclusion that accident was caused due to rash and negligent driving of driver of tanker lorry and further as per Ex.A2-charge sheet, driver himself surrendered before the police. PW.1 furnished sufficient reasons for the delay in lodging FIR and the Tribunal also came to conclusion that because of severe injuries sustained, PW.1 immediately shifted the injured to Remedy Hospital and from there again shifted to NIMS wherein he was admitted on 4.8.2008 and discharged on 9.8.2005 and while undergoing treatment, Jeethaiah died on 17.8.2005 at his residence. P.M.E under Ex.A4 and inquest report under Ex.A3 clearly shows that the cause of death was head injury besides other injuries which were found on the dead body is clearly mentioned in P.M.E report.

23. PW.2 is an eyewitness to the accident who was cited as 4th witness in Ex.A2 as he furnished sufficient reasons for the delay in lodging the FIR. After death of Jeethaiah, his father-in-law gave report to the police. The medical-documentary evidence under Exs.A6, A7 and A10 forthcoming in this case also discloses that soon after the accident police shifted A.Jeethaiah to Remedy Hospital and admitted on 4.8.2005 and on the same day, he was referred to Gandhi /

Osmania General Hospital for better management and immediately, he was shifted to NIMS and admitted him on 5.8.2005, under Exs.A7 and A10, he underwent treatment and discharged from NIMS on 09.8.2005. Thus, the Tribunal is justified in coming to conclusion that accident was due to rash and negligent driving of driver of tanker lorry and there is nexus between accident and death by referring oral evidence of PWs.1 and 2 and the documentary evidence under Exs.A1 to 4, Exs.A6 and A10. The very fact that soon after the accident, Jeethaiah underwent medical treatment in Remedy Hospital, Kukatpally, clearly indicates that he received injuries only in the accident. The said fact is also established from the evidence of PWs.1 and 2 as well as documentary evidence under Exs.A1 to A4, Exs.A6 and A.7 and also the medical bills under Ex.A8 and the discharge summary of NIMS under Ex.A10. Therefore, the finding recorded by the Tribunal that Jeethaiah sustained injuries in accident involving tanker lorry bearing No.KA-38-3472 and the respondent-Insurance Company failed to establish that accident was not caused involving tanker lorry but it was due to DCM van and there is discrepancy with regard to involvement of vehicle is legal, valid do not suffer from any legal infirmities warranting interference.

24. In *Munna Lal Jain Vs. Vipin Kumar Sharma* ((2015) 6 SCC 347) the apex Court considering the earlier decision in *Santhoshi Devi Vs. National Insurance Co. Ltd.* ((2012) 6 SCC 421) held that future prospects to a person who is self-employed or

employed on fixed wages would get 30% raise in income over a period of time and the relevant multiplier for the age group 26 to 30 years is '17' and the actual salary should be learnt as actual salary less tax in addition to 50% of the 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.

25. In *Santhoshi Devi Vs. National Insurance Co. Ltd.*

((2012) 6 SCC 421) the Apex court held that although the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. The court can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In **Sarla Verma's case** in paragraph 24 the Apex court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if

he/she becomes victim of accident, then the same formula deserves to be applied for calculating the amount of compensation.

26. In the case of ***Rajesh Vs. Rajbir Singh*** ((2013) 9 SCC 54) the Apex Court observed that in case of self-employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for the purpose of computation of compensation; (i) by 50% where his age was below 40 years, (ii) by 30% where he belonged to age group of 40 to 50 years, and (iii) by 15% where he was between age group of 50 to 60 years.

27. In ***Syed Sadiq etc Vs. Divisional Manager, United India Ins. Co.*** (AIR 2014 SC 1052) the Apex Court held that the rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

28. Having considered that the appellant/claimant was self-employed and was 24 years of age held that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in the ***Santosh Devi case*** (supra) and with regard to multiplier, relied on ***Sarla Verma case*** which was upheld in ***Santhoshi Devi case***. In the said case the claimant was a vegetable

vendor and there the Apex court applied the decision in *Santhosh Devi Case* and also para 24 of the *Sarla Verma case* that where the deceased was self employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances.

29. In the instant case it is not in dispute that the deceased Jeethaiah was aged about 27 years by the date of the accident and working as a private employee. P.W.1 in the claim petition as well as in the evidence stated that by the date of the accident her husband was 30 years and was private employee and used to earn Rs.4,000/- per month and contributing the same for the family maintenance and welfare and due to sudden death, the claimants future and livelihood were put in the dark and he is the only earning member of the family.

30. Coming to the documentary evidence, the age of the deceased Jeethaiah at the time of accident as per Ex.A3 – inquest report is 30 years, Ex.A4 is 30 years, Ex.A6 – Out Patient Card issued by Remedy Hospitals is 30 years, but whereas as per Ex.A7 – Out Patient Medical Record and Ex.A10 – Discharge Card issued by NIMS Hospital, age of the deceased was noted as 35 years. Accordingly, there is discrepancy with regard to the age of the deceased, as the age was noted as 30 years in Exs.A3, A4 and A6, whereas it was noted as 35 years in Exs.A7 and 10. Still there is T.C.

of the deceased issued by ZP High School, Dundigal, wherein the date of birth of Jeethaiah was noted as 15.2.1978, where as accident was on 4.8.2005. Accordingly, as per Ex.A9 the deceased was 27 years old by the date of occurrence. But, while calculating the age, the Tribunal assessed the age of the deceased as 31 years for which the Tribunal's explanation is that since there is no clarity in the evidence regarding the definite age of the deceased and in the above circumstances having regard to the documents filed by petitioners themselves, his age is 31 years and would fall in the bracket of 31 to 35 years. Such finding is not legal because T.C. certificate – Ex.A9 filed by the petitioner is issued on the application of the deceased made on 27.8.1982. The deceased left the school on 29.3.1989 and Ex.A9 certificate was issued on 9.9.1992, when the school certificate is available where the date of birth was mentioned as 15.2.1978, when he admitted in the 6th class in the said Z.P. High School, Dundigal, there is nothing to discard Ex.A9, therefore the conclusion and finding of the Tribunal assessing the age of the deceased as 31 years is erroneous and which requires to be set aside and modified and it is accordingly modified and the age of the deceased at the time of accident was taken as 27 years.

31. Though the Insurance Company initially denied that the lorry No.KA 38 3472 stood insured with it, it filed a copy of the insurance policy of the said lorry and it was marked as Ex.B1. The contents of Ex.B1 show that the lorry or truck in question is a

TATA Tanker bearing registration No.KA 38 3472 and the name of the insured is given as one M/s.B.Ramadevi and a company's name is also given and the name of that company is Corvine Chemicals and Pharmaceuticals Ltd., Plot No.735, Road No.3, Venkateswara Hills, Banjara Hills, Hyderabad. This description of the insured given in Ex.B1 tallies with the description of the 1st respondent and in fact no serious dispute was raised on this aspect by the 2nd respondent. The period of insurance in Ex.B1 is shown as 27.1.2005 to 26.1.2006. The accident in this case occurred on 4.8.2005 and it therefore follows that Ex.B1 was in force on the date of the accident.

32. Then coming to the question whether this Ex.B1 policy covers the risk of the deceased, it may be noted that the deceased stands in the position of a third party and it therefore follows that Ex.B1 does cover the risk of the deceased. The 2nd respondent could not establish any of the defences available to it under Section 149 of the Act to avoid its liability. Accordingly, for the aforesaid reasons this issue is also answered in favour of the petitioners.

33. With regard to the income of the deceased, there is the evidence of P.W.1, wherein she deposed that her husband is in private employment and used to earn Rs.4,000/- per month. Admittedly, she has not produced any documents showing the private employment and also the income. It is difficult to convince myself as to how a private employee involved in an private employment is expected to produce document to prove his monthly income. Following the decision in

Syed Sadiq's case during the relevant period i.e., in the year 2005 the income of the deceased is fixed at Rs.4,000/- per month. Though the Insurance Company/appellant in M.A. C.M.A. No.816 of 2010 appeared, filed counter and contested the matter and also filed written arguments and contended that the claimants have to prove the age, occupation and income of the deceased, which did not choose to adduce evidence nor did it rebut the claim of the claimants. Therefore, there was no reason for the Tribunal to refuse the claim of the claimants and determine the monthly earnings at a sum of Rs.2,000/- per month.

34. Secondly, the deceased was working as a private employee, therefore, claimants cannot be expected to produce any documentary evidence to substantiate their claim. In the absence of any rebuttal evidence produced by the respondents contrary to the evidence of P.W.1 and claim made by the claimants in the claim petition, I am of the considered view, in the facts and circumstances of the case that the Tribunal should have accepted the claim of the claimants who are appellants in M.A. C.M.A. No.2498 of 2011.

35. It depends on the facts of each case. If the claim made is exorbitant or if any claim made is contrary to the ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income keeping in view the ground realities prevailing at the relevant point of time. In the present case, the deceased was working as a private employee and the evidence of P.W.1 that her husband

used to earn Rs.4,000/- per month was honest and *bona fidi* and therefore, there was no reason for the Tribunal to have reduced the monthly earning of the deceased from Rs.4,000/- to Rs.2,000/- per month, therefore I accept the evidence of P.W.1 that the deceased monthly earnings were Rs.4,000/- per month.

36. Further, it is evidence from the material evidence that the deceased was 27 years old as held above at the time of the accident. It is also established that as a private employee he was earning Rs.4,000/- per month. The issue regarding calculation of future income of a private employee came up for consideration in ***Santosh Devi case*** (supra) wherein the Apex Court held in para 24 of the ***Sarla Verma case*** that where the deceased was self employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In my considered view it will be naïve to say that the wages are total emoluments/income of the deceased who is a private employee or was on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

37. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are

self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The Courts can take judicial note of the fact that with a view to meet the challenges posed by high cost of living, the persons employed in private sectors periodically increase the cost of their labour.

38. Therefore, considering that the deceased was a private employee and was 27 years of age, I hold that he is entitled to 50% increment in the future prospects of the income based on the principle laid down in *Santosh Devi case* (supra). Regarding the use of the multiplier, it was held in Sarla Verma's case, which was upheld in *Santosh Devi case* (supra), therefore, I hold that the multiplier to be used should be as mentioned in column No.4 of the table in the age ground 26 to 30 years – '17'.

39. Then turning to medical expenses, the claimants have filed Ex.A8 bill dated 9.8.2005 given by the Nizams Institute of Medical Sciences Hospital showing an expenditure of Rs.16,310/- on that count. Claimants no doubt did not examine any official from the NIMS Hospital to speak about the expenditure covered by Ex.A8. It should however be noted that NIMS hospital is a government Hospital and the bill is a computer print out and having regard to the injuries suffered by the deceased i.e., head injury and the fracture in the leg, the above expenditure cannot be said to be excessive. Hence, the

claimants are entitled to the said amount of Rs.16,310/- towards medical expenses.

40. As already discussed above, the income of the deceased is Rs.4,000/- per month. After adding 50% of salary as future prospects, it would come to Rs.6,000/- (4000 + 2000). After deducting 1/3rd towards his personal expenses, which works out to Rs.4,000/- per month and Rs.48,000/- per annum. After applying the multiplier 17, it works out to Rs.8,16,000/-.

41. Besides that, petitioners/claimants, as per *National Insurance Company Limited v. Pranay Sethi and Others* (2017 (ACJ) 2700) are entitled for Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Petitioners/claimants are also entitled to Rs.4,000/- towards transportation and Rs.16,310/- towards medical expenses. In total the claimants are entitled to the compensation of Rs.9,06,310/- on all counts.

42. The question of deducting the amount payable under Section 140 of the Act does not arise here as it is represented that no such amount was received by the claimants.

43. In *Adam Indur Muttemma and Ors. Vs. Rathod Reddia and Ors.*¹ this Court observed that the first division bench in *Pidigala*

¹ 2015 (4) ALD 585

Linga Reddy and Others Vs. Satla Srinivas ² took a view that the Court can grant compensation exceeding the claim amount subject to payment of Court fee, if any, payable. Another Division bench of this Court in *New India Assurance Company Limited V. Chintnala* ³ took exactly the opposite view holding that the Tribunal/Court is not empowered to award higher compensation than the compensation claimed by the claimants. The order of reference was made on 28.6.2002. Thereafter, this Court relied on the decision of the Apex Court in *Nagappa v. Gurudayal Singh and Others* ⁴ wherein the Apex Court held that in appropriate case, wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. The same view was thereafter reiterated by the Apex Court in *Rajesh and others Vs. Rajbir Singh and Others* ⁵.

44. In view of the law laid down in the aforementioned judgments, I am of the opinion that because of the erroneous conclusions, the Tribunal came to the conclusion that the claimants are entitled to Rs.2,92,310/-, but, whereas, as per law and facts the claimants are entitled to the compensation of Rs.9,06,310/-.

² 2001 (6) ALD 429 (DB)

³ 2002 (3) ALT 194 (DB)

⁴ (2003) 2 SCC 274

⁵ (2013) 9 SCC 54

45. By relying on the above decisions, I find the compensation amount of Rs.9,06,310/- is just compensation for which claimants are entitled.

46. Accordingly, the appeal filed by the claimants in M.A.C.M.A. No.2498 of 2011 is allowed with costs, while setting aside and modifying the order and decree dated 06.1.2010 in O.P.No.1389 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal/Principal District Judge, R.R. District at L.B.Nagar, Hyderabad and passed the modified award for Rs.9,06,310/- against the respondents 1 and 2 jointly and severally with subsequent interest at 7.5% from the date of petition i.e., 23.12.2006 till the date of deposit or realization, which shall be deposited, after adjusting the amount, if any, already deposited or paid, within a period of 30 days from the date of receipt of a copy of the appeal judgment.

47. The compensation amount awarded hereinabove is apportioned among the appellants/claimants as under :

Appellant No.1	:	Rs.4,06,310/-
Appellant No.2	:	Rs.2,50,000/-
Appellant No.3	:	Rs.2,50,000/-

On such deposit being made, the 1st appellant is permitted to withdraw her share amount as indicated hereinabove. The appellants 2 and 3 being minors, the compensation amount apportioned to them shall be kept in Fixed Deposits of any

nationalised bank till they attain majority. After attaining the majority, they are permitted to withdraw their share amounts according to their need and necessity, by filing necessary application before the Tribunal.

48. The appellants/claimants are directed to pay deficit court fee on the amount awarded exceeding the claim amount within thirty days from the date of receipt of a copy of the judgment.

49. Consequently, the appeal M.A.C.M.A. No.816 of 2010 filed by the Insurance Company is dismissed with costs.

50. Advocate fee is fixed at Rs.2000/- each in both appeals.

51. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

June, 2018

skmr

