THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. Nos.1803 of 2006 and 2159 of 2013

COMMON JUDGMENT :

1. These appeals can conveniently be disposed of by this common judgment inasmuch as they arise out of one and the same accident.

2. These appeals are preferred aggrieved by the Award and decree in O.P. No.238 of 2003 dated 3.6.2006 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-XXI Additional Chief Judge, Nampally.

3. The claimants preferred MACMA No. 1803 of 2006 being aggrieved by inadequacy or otherwise of the compensation awarded by the Tribunal, whereas the United India Insurance Company Limited preferred M.A.C.M.A.No.2159 of 2013 being aggrieved by the quantum of compensation.

3. M.A.C.M.A. No.1803 of 2006 :

The contention of appellants is that the Tribunal having accepted the age of the deceased as 49 at the time of accident, but erroneously taken the age as 53 years at the time of accident for calculation of compensation and applied multiplier 11 instead of 13 while calculating the compensation as per Section 163-A of the Motor Vehicles Act. It is further contended that the Tribunal ought to have awarded funeral expenses, loss of estate and love and affection and that erred in deducting pension of Rs.13,500/- per month from his monthly salary.

4. M.A.C.M.A. No.2159 of 2013 :

The Insurance Company's contention is that the Tribunal erred in taking gross salary instead of net salary while calculating the loss of dependency and further erred in applying the multiplier from Schedule-II of the Act when the present claim is under Section 166 of the Motor Vehicles Act. The correct multiplier for the age of 49 years is 8.25, but not 11 as applied by the Tribunal.

The case of the claimants in brief is as follows :

5. On 4.8.2002 the deceased Khajuria and his wife were travelling in their Indica car and when they reached Darpda on National Highway No.7 at 5 KM stone at about 12.30 PM, the driver of the lorry bearing No. AP 26 U 2066 which belong to the 1st respondent in OP drove the same in rash and negligent manner and hit the car of the deceased. The parents of the claimants died in the accident.

6. The father of the claimants was working as Deputy Inspector General, Central Industrial Security Force and drawing a total salary of Rs.27,388/- per month. He completed net qualified service of 26 years 10 months 4 days as on the date of accident and left with service of 11 years.

7. Before the Tribunal, the owner of the crime lorry was set *ex parte.*

8. Before the Tribunal, the Insurance Company filed written statement and contended that the vehicle was plying out of the permitted areas violating the conditions of the insurance policy, as such the insurance company is not liable to indemnify the insured. The driver of the lorry was not holding a valid and proper driving licence at the time of the accident.

9. After hearing and on consideration of the entire material on record, the Tribunal settled the following issues for trial :

1) *Whether the accident caused death to the deceased that took place on 4.8.2002 due to rash and negligent driving of the lorry bearing No.AP 26 U 2066 by its driver?*

2) *Whether the petitioners are entitled to compensation? If so, to what amount and from whom?*

10. In support of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A9 were got marked. On behalf of the Insurance Company and owner of the crime lorry, no oral evidence was adduced, but Ex.X1 was got marked.

11. On a consideration of the evidence on record, the Tribunal awarded Rs.12,80,144/- with proportionate costs against the Insurance Company and owner of the crime lorry jointly and severally with interest at 7.5% per annum from the date of petition till the date of realization.

12. Now the point that arises for determination is :

"Whether the Award and Decree passed by the Tribunal is suffering from any legal infirmities warranting interference in the appeal?"

The contention of the claimants (appellants in M.A.C.M.A. No.1803 of 2006) is that deduction of pension from gross salary while calculating the compensation is illegal, whereas the insurance company contended that taking the gross salary instead of net salary while calculating the loss of dependency is illegal and erroneous.

13. Before the Tribunal, one N.Sudhakar, an independent eyewitness was examined as P.W.2. He was a cleaner on the lorry bearing No.AP 12 T 6845. He speaks that the lorry bearing No. AP 26 U 2066 which belongs to B.Shyamala (1st respondent in MVOP) hit the car of the deceased. Ex.A.1 is the certified copy of the F.I.R. of which translated copy is Ex.A.2. Ex.A.3 is the certified copy of the final report and Ex.A.4 is its translated copy. The evidence of P.W.2 read with Exs.A1/A2 – F.I.R., Exs.A3/A4 – final report goes to suggest that on 4.8.2002 when the deceased Khajuria and his wife were travelling in the Indica car bearing No. AP 28N 3301, the lorry bearing No.AP 26 U 2066 driven by its driver with high speed and in rash and negligent manner on NH 7 hit the car at about 12.30 PM, as a result of which, both wife and husband were succumbed to injuries on the spot.

14. Ex.A6 is the certified copy of M.V.I. report wherein the Motor Vehicle Inspector opined that the accident is not due to any mechanical defect of the lorry bearing No.AP 26 U 2066.

15. Ex.A9 is the service certificate of P.W.2 which shows that he was a cleaner on the lorry bearing No.AP 12 T 6845.

16. Absolutely there is no oral or documentary evidence produced by respondents to rebut the evidence of P.W.2 and documentary evidence under Exs.A1/A2, A3/A4 and A6.

In the absence of any such evidence the tribunal is perfectly right in holding that the evidence of P.W.1 corroborated by the evidence of P.W.2 supported by Exs.A1/A2, A3/A4 and A6 and A9 establish that P.W.2 is an eyewitness to the accident and his evidence is reliable and trustworthy and that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 26 U 2066 .

17. The evidence of P.W.2 is that on 3.8.2002 he along with the driver of lorry bearing No. AP 12T 6845 was proceeding from Hyderabad to Nagapur and when they reached Wadner of Wardha District, Maharashtra, National High Way No. 7 at about 12.00 Noon of 4.87.2002, one Indica car bearing No. AP 28 N 3301 was proceeding in front of their lorry and when they reached Daroda, one lorry bearing No. AP 26 U 2066 being driven in rash and negligent manner, at high speed, came in opposite direction and dashed the said Tata Indica car. At that time, the lorry on which P.W.2 was working as cleaner was exactly behind the said Tata Indica car and

they (P.W.2 and driver of lorry bearing No. AP 12 T 6845) witnessed the accident. To substantiate the same, P.W.2 who was working as cleaner on lorry bearing No. AP 12 T 6845 filed Service Certificate Ex.P.9 issued by the Hanuman Mini Transport which shows that he (P.W.2) was working as cleaner on the said lorry since February 2002 and was continuing as such as on the date of issue of said certificate. The suggestion put to P.W.2 is that the service certificate does not show that he was working on the said lorry for the past three years. In the certificate Ex.P.9, dated 12.07.2005 it is specifically mentioned that P.W.2 was working as cleaner from February, 2002 onwards, whereas, the accident occurred on 4.8.2002, which is six months after the date of joining of P.W.2 as cleaner on the said lorry. It is thus established that as on the date of accident, P.W.2 was working as cleaner on the said lorry. In Exs. A.3/A.4 final report, it is specifically mentioned that the accident was due to the rash and negligent driving of the driver of the lorry bearing No. AP 26 U 2066.

18. With regard to the income of the deceased, there is the evidence of P.W.1 and P.W.4. P.W.4 clearly deposed that the deceased was drawing salary of Rs.27,388/- per month and the Department issued Ex.A.7 last pay certificate and Ex.A.8 certified copy issued by CISF Unit, BSP BHILAI (C.G.). A combined reading of Exs.A.7 and A.8 with the evidence of P.W.4 shows that the deceased was drawing gross salary of Rs.27,388/- per month. It is also clear from Ex.A.7 salary certificate that Rs.3,533/- was being deducted from the monthly salary of the deceased. In Ex.A.8 it is specifically mentioned that the gross salary of the deceased was

Rs.27,388/-per month, he completed net qualifying service of 26 years 10 months and 4 days as on 4.8.2002, he was holding rank of Deputy Inspector General w.e.f. 7.11.2000 and his date of superannuation was 30.09.2013 and was left with 11 years of service.

19. During the cross-examination P.W.1 admitted that they are getting a pension of Rs.13,500/- per month and they are entitled to receive the same till her last sister attains the age of 25 years, So, they are entitle to receive the pension of Rs.1,62,000/- per annum.

20. According to the evidence of P.W.1, the age of her last sister N.Koujanya was 18 years and therefore they are entitled for pension for a period of 7 years, i.e. till the third claimant attains the age of 25 years.

21. With regard to the age of the deceased, the evidence of P.W.1 and Ex.A.8 goes to suggest that the date of birth of the deceased was 1.10.1953. The accident occurred on 4.8.2002 and taking the date of birth as 1.10.1953, he was 49 years old as on the date of the accident.

22. The main contention of the claimants is that the pension is not liable to be adjusted and the gross salary has to be taken while calculating the loss of dependency.

23. In the case of ***Helen C.Rebello v. Maharastra S.R.T.C.*** ((1999) 1 SCC 90) the Apex Court held that family pension, cash balance, shares, fixed deposits, etc., cannot be termed as

"pecuniary advantages" for the purposes of Motor Vehicles Act, since Motor Vehicles Act is a beneficial legislation.

24. The English Court held that any money coming under the contract of insurance, it would be unjust and unreasonable to hold that the money which he prudently spent: on premiums, the benefit from it should enure to the benefit of the tortfeasor. Under the life insurance, in case one lives up to the time of maturity, after paying full premium he receives the assured money back, based on the terms of the contract. In fact, he receives less than the total premium paid. It is for this gain to the insurer it is obliged to pay to the extent the sum assured; to the claimant in case of injury or death under the contract. In other words, payable only on the contingency as referred, if the contingency of injury or death does not happen, the insurer is the gainer as it receives more under premium than to pay on maturity of the policy, and in case contingency occurs the claimant, the gainer as he receives the amount even before paying the full premiums and the gain is to the proportion of the balance unpaid premium, whether it is injury or death.

25. Similarly, in ***N.Sivammal & Ors. Vs. Managing Director, Pandian Roadways Corporation & Anr.,*** (1985 (1) SCC 18), the Apex Court held that Rs.10,000/- receivable as monetary benefit to the widow of the pension amount, the deduction of which is not qualified. So, though deduction of widow's pension was not accepted but for this, no principle was discussed therein. However, it is found that there is every change in the language in the later Act, revealing the intent of the legislature, viz., to confer wider discretion to the Tribunal

which is not to be found in the earlier Act. Thus, any decision based on the principle applicable to the earlier Act, would not be applicable while adjudicating the compensation payable to the claimant in the later Act.

26. As a general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the 'pecuniary advantage', which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death.

27. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the dependent by accidental injury or death and not other forms of death. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, bank accounts, case and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc.

28. Thus, it would not include that which claimant receives on account other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the "pecuniary

advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken not of such contingency, through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee. The family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two.

29. In the subsequent case of ***Reliance General Insurance Co. Ltd.*** *v.* ***Shashi Sharma*** ((2016) 9 SCC 627) the Apex Court held that the harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. Family pension, Life Insurance, Provident Fund and other benefits extended to the dependents of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 of the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules 2006 must remain unaffected and cannot be allowed to be deducted, which, any way

would be paid to the dependents of the deceased government employee, applying the principle expounded in ***Helen C.Rebello and Patricia Jean Mahajan's cases*** (supra).

30. In the case on hand, from the Award it is clear that the Tribunal considered the evidence of P.W.1 wherein P.W.1 admitted that they are getting pension of Rs.13,500/- per month and they are entitled to receive the same till her last sister attains the age of 25 years. Accordingly the Tribunal assessed the pension per annum at Rs.1, 62,000/-. Further the Tribunal took into consideration that the age of third claimant/ who is the last (younger) sister of P.W.1 is 18 years and they are entitled to receive the pension till the third claimant attains the age of 25 years and accordingly assessed and held that they were entitled to receive the pension at Rs.1,62,000/- x 7 = Rs.11,34,000/- and this amount has to be deducted from the Rs.24,10,144/- and thereby arrived at net amount payable to the claimants at Rs.12,76,144/-. At this juncture, it is just and relevant to refer the decision of the Apex Court in ***Helen C.Rebello v. Maharastra S.R.T.C.*** (supra). If the case on hand is tested on the anvil and touchstone of the settled principle of law laid down in the said decision, we are of the considered opinion that family pension, cash balance, shares, fixed deposits etc., cannot be termed as 'pecuniary advantages' for the purpose Motor Vehicles Act, since Motor Vehicles Act is a beneficial legislation. Regarding the money coming under the contract of insurance, if the contingency of injury or death does not happen, the insurer is the gainer as it receives more under premium than to pay on maturity of the policy, and, in case of contingency occurs to the claimant, the gainer as he

receives the amount even before paying the full premiums. Similarly in the case of *N.Sivammal & Ors. Vs. Managing Director, Pandian Roadways Corporation & Anr* (supra) it was laid down that pension receivable by widow is not deductable.

31. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the dependent/s by accidental injury or death and not other forms of death. The family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. In the above decision as well as in the subsequent decision in *Reliance General Insurance Co. Ltd. v. Shashi Sharma* (supra) it was clearly held by the Apex Court that the harmonious approach for determining a just compensation payable under the Act of 1988 is to exclude the amount received or receivable by the dependants of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to 'pay and other allowances' that was last drawn by the deceased Government employee in the normal course.

32. Having regard to the above, we are of the considered opinion that Family Pension, Life Insurance, Provident Fund and other benefits extended to the dependants of the deceased government employee in terms of Sub-rule (2) to Sub -rule (5) of Rule 5 of 2006 Rules must remain unaffected and cannot be allowed to be deducted. By applying the principles expounded in the *Helen C.Rebello v. Maharastra S.R.T.C.* (supra), the deduction of pension

of Rs.11,34,000/- out of the amount arrived under the head of loss of dependency of Rs.24,10,144/- and thereby only awarding Rs.12,76,144/- besides awarding Rs.2000/- towards damages to clothing, totalling to Rs.12,80,144/- is erroneous, illegal and suffers from legal infirmities warranting interference.

33. Further the contention of appellants/claimants is that the Tribunal having accepted the age of the deceased as 49 years as on the date of accident, committed error having taken the age as 53 years as on the date of accident for assessing the compensation and further erroneously applied factor 11 instead of 13 while calculating the compensation as per Section 163-A of the Motor Vehicles Act.

34. A perusal of the record goes to suggest that the claimants filed claim petition under Section 166 of the MV Act claiming compensation of Rs.40,00,000/- but not under Section 163-A of the MV Act. The relevant multiplier applicable for the age of the deceased for the claims made under Section 166 of the Act is laid down in the case of ***SMT. SARLA VARMA Vs. DTC*** (2009 acj 1298).

35. As per the evidence of P.W.1 coupled with the evidence of P.W.3 supported by Ex.A.8, the date of birth of the deceased is 1.10.1953. The accident occurred on 4.8.2002. Therefore by the date of death, the deceased was aged 49 years which is also accepted by the Tribunal. However, we do not know as to how the Tribunal took the age of the deceased as 53 years for assessing the compensation. The Tribunal erred in accepting the age of the deceased as on the date of accident as 53 years instead of taking 49 years for the purpose of assessing the compensation. Since the

deceased was aged 49 years as on the date of accident/death, in terms of the decision of the Apex Court in ***SMT. SARLA VARMA Vs. DTC*** (supra), the relevant multiplier applicable is '13', but not '11'.

36. The evidence of P.W.3 is that the date of superannuation of the deceased is 30.09.2013 and that there were chances of the deceased getting promotion as IG. P.W.3 is competent to give evidence as per Ex.X.1 authorization. During the cross examination, he stated that he do not know number of officers to be promoted as IG before the name of deceased and that there may be 2 or 3 officers. He further deposed that there is no particular time fixed for promotion and it depends on seniority and availability of vacancy. He further deposed that all the batchmates of the deceased were got promoted and therefore there is every chance of the deceased getting promoted as IG.

37. In *Rajesh v. Rajbir Singh* ((2013) 9 SCC 54) the Apex Court held that :

> "Since the Supreme Court in *Santosh Devi,* (2012) 6 SCC 421 actually intended to follow the principle regarding addition to be made to actual income of the deceased existing at the time of his death towards his future prospects in the case of salaried persons as laid down in *Sarla Verma,* (2009) 6 SCC 121, and to make it applicable also to the persons self-employed and engaged on fixed wages, it is clarified that the increase in the case of those groups (i.e., persons self-employed and engaged on fixed wages) is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed persons or

persons with fixed wages, where the deceased victim was below 40 years, there must be in addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

In *Sarla Verma case* it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, it is opined that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. Section 168 of the Motor Vehicles Act, 1988 empowers the Tribunal to award compensation. It is further clear that the Tribunal can award the compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988. The duty of the Tribunal/Court is to fix a just compensation and it has now become settled law that the Tribunal/court should not succumb to niceties or technicalities, in such matters. Attempt of the Tribunal/Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim."

38. Further, the Division Bench of this High Court in the case of ***Gangavarapu @ V.Pulmani v. Balumuri Venkateswarlu*** (2006 (3) ALT 4 (D.B.)) held as follows :

> "Thus, as far as Government employees are concerned, we are of the view that in cases of persons with substantial future service, positive view can be taken with regard to future enhancement of the salary, for the purpose of fixing compensation. Thus, applying the principle laid down in *Sarala Dixit* case (1 supra), we feel that the income of the deceased for the purpose of deciding the loss of dependency has to be calculated as has been done in the above decision."

39. In the case on hand, the evidence of P.W.3 supported by Ex.A.8 which is not rebutted by the respondents by adducing evidence either oral or documentary, goes to suggest that the deceased was aged 49 years as on the date of his death and was left with 11 years of service. He was holding the rank of Deputy Inspector General with effect from 7.11.2000 and his date of superannuation is 30.09.2013. Thus P.W.3 is very clear that there is every chance of the deceased getting promotion as I.G.

40. In the case of ***RAJESH AND OTHERS Vs. RAJBIR SINGH AND OVERTHERS*** {(2013) 9 SCC 54} the Apex Court held that in the case of self employed persons or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Addition should be 30% in case the

deceased was in the age group of 40 to 50 years. Similarly in the case of ***NATIONAL INSURANCE CO. LTD Vs PRANAY SETHI (***2017 ACJ 270***)*** the Apex Court held in similar lines that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. By applying the principle laid down in the above cases to the case on hand, as the deceased was aged 49 years as on the date of accident, an addition of 30% should be made to the actual income towards future prospects.

41. The contention of Insurance Company (Appellant in MACMA No.2159 of 2013) is that the Tribunal committed an error in taking the gross salary of the deceased at Rs.27,388/- per month for assessing the loss of dependency and that it ought to have taken the net salary of the deceased at Rs.15,770/-.

42. It is now settled that for the purposes of assessment of the compensation in a motor accident claim case, gross salary less the tax paid by the deceased is to be taken into consideration. The contributions made by the deceased employee towards Employees' Provident Fund, life insurance (LIC), group insurance and the deductions shown in the salary certificate of the deceased employee towards the vehicle loan instalment, the benefit fund and also the

amounts received by the deceased employee towards interim relief, special pay, dearness allowance, house rent allowance, need not be deducted from the gross salary of the deceased for ascertaining the income, because the contributions or deductions made towards EPF, LIC, group insurance and benefit fund would be beneficial to the family of the deceased employee and it would be the estate of the deceased. The deduction towards vehicle loan is not permanent in nature. Needless to say that the actual income should be income after paying the tax, if any. No income tax deduction is shown in Exs.A.7 salary certificate. In ***SARLA VERMA*** case the Apex Court held that income tax paid should be deducted from the annual income to arrive at the `income' which will form the basis for calculating the compensation. The same was the view expressed by the Apex Court in ***NATIONAL INSURANCE Co. Ltd. v. INDIRA SRIVASTAVA*** { 2008 ACJ 614 (SC)}. It was held therein that The loss caused to the family on the death of a near and dear one can hardly be compensated in monetary terms. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning and that if some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. Therefore gross salary which the deceased was drawing has to be considered while computing the loss of dependency. Following the principles laid down in the afore said cases, the gross salary of the deceased at

Rs.27,388/- per month is taken for assessing the loss of dependency.

43. Thus, if the income of the deceased is taken at Rs.27,388/- per month, 30% of the same is to be added to it towards future prospects as discussed hereinabove. Then the monthly income of the deceased can be determined at Rs.35,604/- (Rs.27,388 + 8,216). Out of the said income, 1/3rd has to be deducted towards his personal expenses had he been alive. Then the monthly contribution to the family would come to Rs.23,736/- or Rs.2,84,832/- per annum. Since the deceased was aged 49 years as on the date of accident, the appropriate multiplier according to the decision of the Apex Court in ***SARLA VARMA***'s case, is '13'. Thus the total loss of dependency would come to Rs.2,84,832 x 13 = Rs.37,02,816/-.

44. Added to the same, in terms of the recent decision of the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND ORS*** (2017 ACJ 2700), the claimants are entitled Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Further the Tribunal did not award any compensation towards loss of love and affection. The deceased employee was blessed with three daughters. Considering the same, we think it just and appropriate to award Rs.10,000/-each to the three claimants, in total Rs.30,000/- towards love and affection. The amount of Rs.2,000/- awarded by the Tribunal towards damages to clothing does not warrant interference.

45. Thus, in all, the claimants are entitled to receive the compensation of Rs.37,02,816/- + Rs.30,000/- + Rs.30,000/- + Rs.2000/- = Rs.37,64,816/-.

46. For the foregoing discussion and in the result, the appeal MACMA.No.1803 of 2006 preferred by the claimants is partly allowed, with proportionate costs while setting aside and modifying the Award and Decree in O.P. No.238 of 2003 dated 3.6.2006 on the file of the Motor Vehicle Accident Claims Tribunal-cum-XXI Additional Chief Judge, Nampally, Hyderabad and awarding total compensation of Rs.37,64,816/-, with interest at 7.5% per annum from the date of petition i.e. 31.12.2002 till the date of deposit.

47. Consequently, the appeal MACMA.No.2159 of 2013 preferred by the United India Insurance Company Limited is dismissed setting aside and modifying the Award to the extent indicated hereinabove.

48. Inasmuch as it is held hereinabove that the driver of the lorry bearing No. AP 26 U 2066 was solely responsible for the cause of accident, the respondents in MACMA No. 1803 of 2006 (owner and insurer) are liable to pay the said compensation awarded herein above jointly and severally. Accordingly they are directed to deposit the total compensation awarded hereinabove, after deducting the

amount if any already paid/deposited, within a period of forty five (45) days from the date of receipt of a copy of this judgment.

49. On such deposit being made, the claimants are permitted to withdraw the compensation in equal shares.

50. Advocate fee is fixed at Rs.2,500/- in each.

51. Miscellaneous petitions pending consideration if any in the appeals shall stand closed in consequence.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated 13th April, 2018.
SKMR/Msnr