

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T. RAJANI

MACMA.Nos.4518 of 2008 and 708 of 2010
AND
MA CMA Nos.4522 of 2008 and 1039 of 2018

COMMON JUDGMENT: (per Hon'ble Smt Justice T. Rajani)

MACMA.No.4518 of 2008 is preferred by the appellant-insurance company, who is the second respondent before the Court below, and MACMA.No.708 of 2010 is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad in OP.No.231 of 2004 dated 14.08.2008.

MACMA.No.4522 of 2008 is preferred by the appellant-insurance company, who is the second respondent before the Court below, and MAMCA.No.1039 of 2018 is filed by the appellants, who are the claimants before the court below, assailing the judgment of the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad in OP.No.1268 of 2004 dated 14.08.2008.

2. The appellant in MA CMA No.4518 of 2008 assails the judgment on the grounds that the Court below failed to see that the risk of the deceased was not covered under the policy and the Court below under the Motor Vehicles Act (for short 'the Act') is constituted to decide the claim of third parties only and that there is no statutory liability on the part of the appellant;

the Court below wrongly passed the award instead of returning the OP for proper presentation; the Court below has shown the mother of the insured as the respondent and the father of the insured as guardian, which is not proper; in case, the insured dies subsequent to the accident, the claimants and the first respondent will come into the shoes of the owner and there cannot be any claim by legal representatives of the owner of the vehicle, more so, under the provisions of the Act; the Court below did not properly discuss the liability and also the vicarious liability and the aspect of joint and several liability; the Court below failed to see that the same claimants filed OP.No.1268 of 2004, as dependants of their father; the claimants will step into the shoes of the owner of the vehicle after the death of their father and this is not a case of third party claim; the Court below failed to see that in case of income out of agriculture and business, only loss of supervisory capacity, if any, has to be calculated; the Court below failed to see that as per the latest judgment of this Court, the table as per “Bhagwan Das” has to be followed.

The appellants in MA CMA No.708 of 2010 assails the judgment on the ground that the Court below ought to have taken the earning capacity of the deceased as Rs.1 lakh per month and ought to have granted interest at 9% per annum.

The appellant in MA CMA.No.4522 of 2008 assail the judgment on the grounds that the Court below failed to see that the deceased was the insured and owner of the vehicle; it failed

to see that there is no statutory liability, even otherwise, on the part of the appellant; it failed to note that under the policy there is no specific coverage covering the accidental risk of the owner himself under the personal accident coverage, called PA coverage; the Court below wrongly passed the award, instead of returning the OP for proper presentation and the Court below failed to see that the tribunal under the Motor Vehicles Act (for short 'the Act') is constituted to decide the claim of third parties only and not to decide the claim of the deceased himself. The Court below did not properly discuss the liability and also the vicarious liability and the aspect of joint and several liability and failed to see that the deceased was not driving the vehicle and he was only travelling as a passenger, hence, there is no coverage for the deceased, who is the owner of the vehicle, under the policy.

The appellants/claimants in MAMCA.No.1039 of 2018 assail the judgment on the ground that the Court below erred in restricting the award to Rs.2,00,000/- and it ought to have allowed the OP.

3. Briefly the facts of the case, as per the claim petitions, are as under:

On 04.10.2003, Ratnakar Babu Rao (deceased in O.P.No.1268 of 2004), Vemavaram Prasanna (deceased in O.P.No.231 of 2004) and another person, along with driver, were proceeding in an Icon Ford car bearing No.AP 24 H 2277 and when the car reached near Peda Kaparathi bus stage at about

4.30 PM, the driver of the car lost control and dashed to a tree, due to which the inmates of the car including with driver, died on the spot. A case was registered in Cr.No.82 of 2003 under Section 304 IPC.

Ratnakar Babu Rao (deceased in O.P.No.1268 of 2004) is the owner of the car. While travelling in the said car, he met with the accident and died. Prior to the accident, he was aged 38 years and was maintaining a petrol bunk and was earning a profit of Rs.2,50 lakhs per annum. He also had agricultural lands at Janampally Village of Ramannapet Mandal of Nalgonda District and was earning Rs.One lakhs from the same. The deceased had bright political career. Due to his sudden demise, his children are put to huge loss.

Earlier to the afore-stated incident, Vemaravam Prasanna (deceased in O.P.No.231 of 2004) was working as the Chair Person, Zilla Parishad, Nalgonda and was drawing Rs.7,500/- per month as salary and was earning Rs.25,000/- per month on the business and Rs.1 lakh per annum on agriculture. She has been contributing the same to the family. The deceased had a bright future as a politician and she could have become a Minister, had she been alive. Due to her death, the claimants not only lost their bread winner but also her love and affection. After the death of the husband of the deceased, respondent No.1, who is the mother of her husband, became the owner of the car. The car is insured with second respondent.

The claimants, who are the children of the said deceased i.e., Ratnakar Babu Rao and Vemavaram Prasanna, filed O.P.No.1268 of 2004 claiming compensation for the death of their father and O.P.No.231 of 2004 claiming compensation for the death of their mother.

The second respondent filed counter, denying the averments made in the petition and putting the claimants to strict proof of the averments made therein. It was stated that the owner of the car is the husband of the deceased and father of the claimants and after his death, the vehicle ought to have been transferred in the name of the claimants, but the same was transferred in the name of the mother of the deceased, who is respondent No.1. Hence, the transfer of the vehicle is not valid and the claim of the claimants against R1 and R2 is also not valid. The guardian is not proper guardian in the eye of law. The claim amount was also disputed.

4. Considering the aforesaid rival pleadings, the Court below framed the following issues in both the OPs:

- i) Whether the deceased died in the accident that took place due to rash and negligent driving by the driver of Icon Ford Car bearing No.AP-24-H-2277?
- ii) Whether the petitioners are entitled for compensation? If so to what amount and from whom?
- iii) To what relief?

5. In the course of trial in O.P.No.1268 of 2004, P.Ws.1 and 2 were examined and Ex.A1 to A13 were marked on behalf of the

claimants and on behalf of R2, R.W.1 was examined and Exs.B1 to B3 were marked. Considering the evidence and the material on record, the Court below awarded a sum of Rs.2,00,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization and fixed the liability on the R2 while dismissing the claim against R1.

6. In the course of trial in O.P.No.231 of 2004, P.Ws.1 and 2 were examined and Ex.A1 to A25 were marked on behalf of the claimants and on behalf of R2, R.W.1 was examined and Exs.B1 to B3 were marked. Considering the evidence and the material on record, the Court below awarded a sum of Rs.23,21,000/- with proportionate costs and subsequent interest at 7.5% per annum from the date of petition till the date of realization and fixed the liability on the R2 while dismissing the claim against R1.

7. The counsel for the insurance company raises, importantly, two contentions viz., one is that the award made against the second respondent cannot be sustained when the claim against the first respondent is dismissed and the second contention is that the first respondent, being the mother of the deceased- Ratnakar Babu Rao, cannot be considered as a legal representative and she cannot be projected as a third party in order to maintain claim against her, in the capacity of owner of the vehicle. It is contended that the claimants are the legal heirs of the deceased/owner of the car, who is their father and they would step into the shoes of the owner and hence, they cannot

maintain a claim against themselves and due to the said reason, the claim petition is liable to be dismissed. The other contention raised by the second respondent, which is not pressed at the time of hearing, is that there is no coverage for the inmates of the car.

8. The claimants contend that the income of the deceased was taken on lower side and the future prospects of the deceased were not taken into consideration while assessing the compensation. They also contend that the amounts towards funeral expenses and loss of estate were also not awarded.

8. Keeping in view the rival contentions, we need to consider the following issues:

- 1) Whether there is coverage for the inmates of the vehicle under the insurance policy taken with the second respondent.
- 2) Whether the risk of the owner, travelling in the car, is covered by the insurance policy.
- 3) Whether the award against the second respondent is liable to be set aside consequent to the dismissal of the claim petition against the first respondent and whether the claimants, who are the legal heirs of the deceased, have to step into the shoes of the owner and if so, whether the claim can be maintained.
- 4) Whether in terms of section 165 of the Act, the claims cannot be maintained before the tribunal
- 5) Whether the compensation awarded by the Court below needs to be enhanced and whether the claimants would be entitled for more than Rs.2 lakhs as compensation for the death of the owner.
- 6) To what relief.

POINT No.1:-

9. The deceased are the owner and the wife of the owner of the vehicle. They met with their deaths while travelling in the vehicle. The contention with regard to the coverage of the risk of the wife of the owner, by the insurance policy, is not very vehement. The counsel being conscious of the well settled law regarding the coverage of the risk of an occupant of the vehicle, which is a car, does not raise strong argument with regard to the said aspect. The policy marked as Ex.B1 is undisputedly a comprehensive policy.

10. A ruling of this court reported in *Jayavarapu Ramesh Babu v. Jayavar along with the ownerapu Laxminarayana*¹ was relied upon by the counsel for the respondent, wherein it was held that the Insurance Company is not liable for the death of an occupant of a car, when no extra premium has been paid, covering the occupants.

11. Section 147 of the Act does not require an Insurance Company to cover the risk of the death or bodily injury to the gratuitous passenger, but the insurer can enter into a contract of insurance with the insured, covering a risk wider than the minimum requirement of the statute, covering the risk of the owner of the vehicle/insured or gratuitous passenger or such other risks not mandated by the statute. The above proposition is very well settled in view of the above ruling. This court relied on the judgment of the apex court in *Oriental Insurance Co.*

¹ 2010 ACJ 585

*Ltd. Vs. Sudhakaran*² wherein it was held that indisputably, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle and in terms of Section 147 of the Act, only in regard to the reimbursement of the claim to a third party, a contract of insurance must be imperatively taken by the owner of the vehicle and when however an owner of a vehicle intends to cover himself from other risks, it is permissible to enter into a contract of insurance, in which event the insurer would be bound to reimburse the owner of the vehicle, strictly in terms thereof. It was also held that the provisions of the Act, in particular, Section 147 must be kept confined to third party risk and a contract of insurance, which is not statutory in nature, should be construed like any other contract.

12. In our view, the above observations made by the apex court would mean, that apart from the terms of the policy being in consonance with the requirements of Section 147, the contract of insurance can specify the terms in accordance with the requirements and the intention of the insured. If a wider coverage is given under the contract of insurance, the insurer would be liable for the liability that arises in terms of the said contract.

13. In *Usha Baghel v. United India Insurance Co. Ltd.*,³ a Full Bench of Madhya Pradesh High Court held that merely by a clause in the policy enabling the owner of the vehicle to drive the

² 2008 ACJ 2045 (SC)

³ 2008 ACJ 1697 (MP)

vehicle, the risk of the owner-insured was not covered by the policy of insurance, unless an additional premium was paid so as to cover the risk of the owner-insured driving the vehicle.

14. A decision of the High Court of Madras reported in *Royal Sundaram Alliance Insurance Co. Ltd., v. A.Pappathi and others*⁴ was relied upon by the respondent's counsel, wherein the Insurance Company disputed its liability on the ground that the victims are gratuitous passengers and there is no statutory liability to cover the risk of occupants. The High Court considered the circular dated 17.03.1978 issued by the Tariff Advisory Committee, directing the Insurance Companies to incorporate the words, 'including occupants carried in the motor car provided that such occupants are not carried for hire or reward'. It was held that India Motor Tariff, 2002 supersedes earlier provisions of tariff and under India Motor Tariff, 2002 Package Policy casts liability on the insurance company to compensate the death or bodily injury to any person, including occupants carried in the vehicle, provided such occupants are not carried for hire or reward and hence insurance company would be liable.

15. The ruling of the Madras High Court reported in *S.Dhanapal v. A.Jerome and others*⁵ was also cited by the respondent's counsel, wherein, considering that no additional premium had been paid, covering the risk of the owner of motor cycle, the contention that the owner who was driving the vehicle

⁴ 2011 ACJ 557

⁵ 2008 ACJ 2480

has to be treated as a driver other than paid driver was not accepted. It was held that the definition of word, "Driver" does not include owner-cum-driver.

16. From the rulings relied upon by the respondent's counsel itself, it can be held, that when a comprehensive policy covering the risk of the occupants of the car is taken, the insurer would be liable for the death of the occupants of the car also. At this juncture, a perusal of Ex.B2, Policy would be beneficial. The policy is admitted to be a comprehensive package policy. There is coverage for unnamed persons travelling in the car. IMT 16 provides for personal accident to unnamed passengers other than insured and the paid driver. IMT 16 does not specify any limit. Hence, the petitioners in MA CMA No.708 of 2010 would be entitled for the whole of the compensation.

Accordingly, point No.1 is answered.

POINT No:2: -

17. As regards, the coverage of the policy in respect of the owner, who was travelling in the car, not as a driver but as an occupant, is concerned, again the terms of the policy would become relevant. There is a personal accident cover under Section iii. Section iii relates to personal accident cover for owner and driver. The terms specified thereunder can be extracted for a quick reference, which reads as follows:

SECTION III-PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

The Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the Owner-Driver of the Private Car, in direct connection with the Private Car insured or whilst driving or mounting into/dismounting from the Private Car insured or whilst travelling in it as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Provided always that:

A) Compensation shall be payable under only one of the items (i) to (iv) above in respect of the Owner-Driver arising out of any one occurrence and the total liability of the insurer shall not in the aggregate exceed in the sum of Rs.2 lakhs during any one Period of Insurance.

B) No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (1) intentional self injury suicide or attempted suicide physical defect or infirmity or (2) an accident happening whilst such person is under the influence of intoxicating liquor or drugs."

18. The counsel for the respondent, in the first place, contends that there is no coverage for the owner, who is travelling in the car as an occupant, as the policy covers only the risk of the owner who is travelling in the car as a driver. The second contention is that even if we come to a conclusion that there is a coverage for the owner travelling as an occupant of the car, the limit of liability is only Rs.2 lakhs. In order to understand whether there is any substance in the first contention, a perusal of the policy is once again required. Under Section iii, we see that there is coverage for owner-cum-driver of the private car whilst driving or mounting

into/dismounting from the private car, insured or whilst travelling in it as a co driver.

19. In this case, there is no dispute that owner had a valid driving licence and the driver was engaged to drive the car, while he was travelling in the car. Whether he was travelling as a co-driver or not is not evident from the material on record. But, if, he being capable of driving, travels in the car along with the driver, he would be capable of acting as a substitute driver. The terms used under Section iii are of wide connotation. In our opinion, they do not exclude the owner, who is travelling in the car. Such interpretation meets the requirement of a beneficial enactment.

20. The Madras High Court in *The National Insurance Co. Ltd., vs. Krishnan* in C.M.A.No.3006 of 2012 in M.P.Jo.1 of 2012 dated 15.03.2013 observed that the counsel for the respondent therein, by placing reliance on catena of decisions, submitted that the petition can be maintainable against the insurer, as premium towards the personal accident coverage policy, to cover the bodily injuries or the death of the the owner cum driver and even assuming that he was not actually driving the vehicle, which met with an accident, yet having agreed under the Contract of Insurance, to indemnify the owner, the Insurance Comp[any is liable to pay the compensation, irrespective of the fact, as to whether the owner travelled as an occupant or driven the vehicle. It is the specific contention of the learned counsel that the Insurance Company cannot

repudiate its liability to pay compensation, when additional premium has been received, to cover the owner of the vehicle. Same is the contention of the claimant's counsel before us.

21. However, the substance of all the judgments relied upon both by the claimant's counsel and the respondent's counsel seems to be that the insurer is not obligated to cover the risks outside the requirements of Section 147 of the Act policy, but under a comprehensive package policy, the insurer can contract with the insured for wider coverage and the terms can be specified. The ultimate exercise that fall upon us is to interpret the terms of the policy. The policy would show that it has covered the risk of the occupants of the car and that of the owner-cum-driver. By looking at the extent of coverage given by the policy, the intention of the insurer can be gathered. The terms imply that the policy was taken with an intention to give coverage to all the risks arising out of the use of the vehicle. In such circumstances, giving a narrow interpretation to the words "owner-cum-driver", to mean the owner, only while driving the car, would be against the spirit of the terms of policy. Hence, we opine that the owner, who was travelling in the car as an occupant is also covered by the terms of the policy.

22. But, however, the insurer was conscious in restricting the liability in respect of the owner-cum-driver, only to Rs.2 lakhs. Hence, the liability of the insurer cannot, in our opinion, go beyond Rs.2 lakhs. Hence, the claimants in MA CMA No.4522 of 2008 would be entitled only upto Rs.2 lakhs.

Accordingly, point No.2 is answered.

POINT No.3:-

23. The respondent's counsel contends that the claimants cannot be both givers and the recipients. He contends that the claim petition cannot be maintained by the owner or the legal representative of the owner, as the owner is the insured of the offending vehicle and he cannot be treated as a third party. The operative portion of the decision of the Madras High Court in *National Insurance Co. Ltd.'s* case (supra), held as follows:

“12. At the outset, this Court is of the view that the claim petition filed under [Section 166](#) of the Motor Vehicles Act, 1988, by the injured/claimant against himself, claiming compensation for the injuries/permanent disablement, is not maintainable. The Claims Tribunal has committed a gross mistake in ordering joint and several liability against the owner, who happened to be a claimant in this case and the appellant-Insurance Company. The respondent, being the owner of the vehicle, cannot be made liable to pay compensation to himself and consequently, the National Insurance Company Ltd., Tiruchengode, appellant herein, cannot be vicariously made liable to indemnify the insured. But at the same time, it has to be considered, as to whether the injured, being the owner of the vehicle, can claim compensation against the insurer, without impleading him, as a party in the claim petition. The said issue has been answered in a recent decision of this Court in [United India Insurance Co. Ltd., v. K.Paruvatham](#) reported in 2012 (1) TNMAC 111, wherein, for the death of her husband, wife made a claim petition under [Sections 166](#) and [147](#) of the Motor Vehicles Act, 1988. At the time of accident, he was travelling in a car, which dashed against a stationary vehicle. The Insurance Company alone was prosecuted. The liability of the company to pay compensation was disputed, on the ground that being the legal

heir, she has stepped into the shoes of the insured and that therefore, placing reliance on a decision in [Oriental Insurance Co. Ltd., v. Sunita Rathi](#) reported in 1998 ACJ 121, it was contended that, as per the policy, she cannot claim compensation, as the legal heir of the deceased. Per contra, the respondent therein, has contended that inasmuch as the policy considered in the abovesaid reported case, was a comprehensive policy, the Insurance Company cannot repudiate the claim. Reliance was also placed on the following decisions, (i) [New India Assurance Co. Ltd. v. Kendra Devi and others](#), 2008 (1) TN MAC 67 (SC): 2008 (1) CTC 430;

(ii) [Oriental Insurance Co. Ltd. v. Jhuma Saha and others](#), 2007 (2) TN MAC 56 (SC) : 2007 ACJ 818;

(iii) [New India Assurance Co. Ltd v. Meera Bai and others](#), 2007 ACJ 821; and

(iv) [Dhanraj v. New India Assurance Co. Ltd. and another](#), 2004 (2) TN MAC 144 (SC) : 2005 ACJ 1.

13. My Esteemed Brother, Hon'ble Mr. Justice G.M. Akbar Ali, has framed following point for consideration. Whether being the dependant/legal representatives of the deceased, the insured herself can maintain a claim petition against the insurer. After considering the decisions, stated supra, at Paragraphs 22 to 24, the learned Judge held as follows:

22. If there is a personal accident coverage, the Insurance Company is liable. However, the above referred case laws and discussions relate to the death or bodily injury of the owner/insured. The question before this Court is whether a owner can maintain a claim as a legal heir of the deceased who died in an accident involving the insured vehicle. The contention of the Insurance Company is that the liability under [Section 163-A](#) of Motor Vehicles Act is on the owner of the vehicle as a person and the Claimant cannot be both a Claimant as also the recipient.

23. However, [Section 166](#) deals with just compensation to a Claimant who is entitled to file a Claim Petition for the death of

the bread winner or for the bodily injury of the Claimant. [Section 147](#) deals with requirement of policy and limits of liability. The liability of the Insurance Company is to the extent of indemnification of the insured against a third person. If the insured can be fastened with any liability the Insurer is liable to indemnify the insured. For the death of a passenger, if covered by the Policy of the insurance, the insured is liable and therefore, the Insurance Company is liable to indemnify the insured. In my considered view, the insured, "as a person" being the legal heir of the deceased, in a "different capacity" is entitled for the compensation under [Section 166](#) of the Act. In that event, in my considered view, the Insurance Company cannot escape from indemnifying the insured simply because the insured happens to be the recipient. In a simple analogy, had there been any other legal heir apart from the insured, they would maintain a claim for compensation as they are entitled for compensation. Therefore, the insured being the sole legal heir/dependant in a dual capacity is entitled to be indemnified by the Insurance Company and is also entitled to be a recipient of such claim.

24. It is also pertinent to note that in a comprehensive Policy of Insurance if the personal accident of the owner is covered the legal heirs of the owner can maintain a claim. On the same analogy, the owner/insured being the legal heir of the deceased/passenger, who is covered under the Policy is also entitled for a just compensation under [Section 166](#) of the Act."

24. We find the above reasoning going on the lines of interpretation of a beneficial legislation and we accept the same. This would answer the query raised by the respondent's counsel as regards the mother of the owner being shown as the first respondent. When a claim can be maintained by the insured, it goes without saying that he need not be figured as respondent and it would suffice for the claim to be maintained against the

insurer alone. In such circumstances, the fact of the mother of the owner figuring as R1 can be ignored.

Accordingly, point No.3 is answered.

POINT No.4:-

25. The counsel for the respondent raises a contention with regard to the maintainability of the claim before the motor accidents claims tribunal. He contends that under Section 165 it is only the claims of the third parties that can be entertained and not the claims pertaining to the owner or the legal representatives of the owner. Section 165(1) is extracted herein for quick reference.

“Sec.165. Claims Tribunals:-

(1) A State government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this chapter referred to as Claims Tribunal) for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”

26. A reading of the above provision would bring out the difference in the terminology used in respect of the death or bodily injury on the one hand and damages to property on the other hand. The claims for compensation in respect of accidents involving death or the bodily injury can relate to any person if the claim arises out of the use of motor vehicles but the claim for the damages to any property shall relate to only a third party. In the cases before us, there is no claim for property. The

claims relate only to the death of the persons travelling in the car. Hence, we conclude that the claims can be maintained before the motor accidents claims tribunal.

Accordingly, point No.4 is answered.

POINT NO.5: -

27. As regards the compensation, in respect of the death of the deceased in MA CMA No.4222 of 2008, the compensation cannot be beyond Rs.2 lakhs as was held under point No.2. Hence, the compensation shall be Rs.2 lakhs and there is no interference in that regard with the judgment of the court below.

28. As regards the compensation awarded in O.P.No.231 of 2004, which gives rise to MA CMA No.708 of 2010, the deceased was stated to be a chair person of Zilla Parishad of Nalgonda District. She also had agricultural land and she used to earn Rs.3,000/- per month as a honorarium, for being a chair person of Zilla Parishad of Nalgonda. Ex.A8 certificate evidences the same. Ex.A9 certificate which shows that the deceased received rent of Rs.10,000/- as chair person does not seem to be relevant and Exs.A11 and A12 are the registration certificates of petrol bunk in the name of the deceased. The lower court did not consider the agricultural income. Hence, the contention of the respondent's counsel that agricultural income cannot be considered as the land still is available to the legal heirs need not be considered. The court below arrived at the income of the deceased, by relying on the income tax returns filed in proof of the same. The earnings of the deceased, based on the income tax returns was arrived at Rs.12,000/- per month. The net

earnings of the petrol bunk were taken as Rs.6,000/- per month. The income derived as chair person of zilla parishad is also included in the income tax returns. Hence, the gross income was taken as Rs.18,000/- per month, which need not be disputed.

29. The dispute is with regard to the future income of the deceased that was not taken by the court below, while assessing the compensation. The deceased is aged 36 years. The counsel relies on the decision of the Supreme Court in *NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI* [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] to contend that 40% has to be taken as the future hike of the income of the deceased. Accepting the said principle, if 40% future hike is considered, the income of the deceased would come to Rs.25,200/- (i.e., Rs.18,000X405). After deducting 1/3rd towards the personal expenses of the deceased, the loss of monthly income would be Rs.16,800/- and loss of annual income would be Rs.2,01,600/-. The multiplier relevant for the age of the deceased as per the decision of the Supreme Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*⁶ is 15. Hence, the loss of future income to the claimants would come to be Rs.30,24,000/- i.e., Rs.2,01,600/- X 15.

30. Apart from the above, following *PRANAY SETHI*'s case (supra), Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all,

⁶ (2009) 6 SCC 121

the claimants in MA CMA No.708 of 2010 are entitled to total compensation of Rs.30,24,000/- + Rs.15,000/- + Rs.15,000/- = Rs.30,54,000/-.

31. Hence, the award of the Court below is modified as indicated above, with proportionate costs. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below. The enhanced compensation shall be apportioned among the claimants in the same proportion as per the award of the Court below.

Accordingly, point No.5 is answered.

POINT No.6:-

In the result, MA CMA Nos.4518, 4522 of 2008 and 1039 of 2018 are dismissed and MA CMA No.708 of 2010 is partly allowed with proportionate costs.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

September 7, 2018
DSK/LMV