THE HON'BLE SRI JUSTICE N. BALAYOGI

<u>M.A. C.M.A. Nos.944 & 1098 of 2011</u>

<u>COMMON JUDGMENT :</u>

The appellant/claimant and the Insurance Company/R2 aggrieved by the Award and Decree dated 4.2.2011 in O.P.No.1166 of 2008 on the file of the XXI Additional Chief Judge-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, awarding compensation of Rs.4,00,000/- along with proportionate costs and interest at 7.5% per annum from the date of the petition till the date of realization and dismissing the rest of the claim without costs, preferred these appeals.

2. <u>M.A. C.M.A. No.944 of 2011 :</u>

The contention of the appellant/claimant is that the Tribunal ought to have considered that the claimant, as a mason, used to earn Rs.6,000/- per month and ought to have awarded Rs.2,00,000/- under the head permanent disability, Rs.1,00,000/- towards artificial leg and ought to have awarded compensation under various heads, such as, loss of earnings, pain and sufferance, transport and hospital medical expenses, attendant charges, extra nourishment and loss of amenities in life etc.,

It is the further contention that the Tribunal ought to have considered the disability to the extent of 50% and loss of earnings at

100%, since he is a mason and his limbs should be perfect in order to perform the work of mason.

It is further contended that awarding of interest @ 7.5% per annum is very low, inasmuch as the national banks are also giving interest at 11% to 12% per annum to their customers on fixed deposits.

3. <u>M.A. C.M.A. No.1098 of 2011 :</u>

The contention of the appellant/Respondent No.2 – Insurance Company is that it is the evidence of R.Ws.1 to 3 and Exs.B1 to B6 and Ex.X1 that the driver of insured lorry was having LMV non-transport driving licence and he was not having heavy goods vehicle transport driving licence as per Exs.B4 and B5. The Tribunal, having held that the driver was having light motor vehicle driving licence, grossly erred in holding that the vehicle of the 2nd respondent is a light motor vehicle and as such, the driver of the respondent No.2 herein was competent to drive it. The Tribunal ought to have held that the insured/R1 alone is liable to pay the compensation and the award of Rs.75,000/- for three injuries and Rs.25,000/- towards medical expenses is quite excessive and thereby the Tribunal committed error.

It is further contended that the Tribunal erred in awarding Rs.1,00,000/- for fixation of artificial limb, Rs.2,00,000/- for permanent disability and loss of earnings, which are quite excessive and not supported by any evidence.

The Tribunal also erred in awarding interest at 7.5% per annum ignoring the decision in ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and another*** (2009 ACJ 1298) wherein it was held that awarding of interest at 6% per annum is reasonable.

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

"Whether the Award and Decree of the Tribunal suffers from legal infirmities warranting interference"

5. The claim of the appellant in M.A. C.M.A. No.944 of 2011 in brief is as follows :

On the date of accident the appellant/claimant was walking along with motorcycle bearing No.AP 04 8761 at 9 AM and in the meanwhile, the vehicle of the Respondent No.1, driven in rash and negligent manner, dashed the motorcycle of the appellant/petitioner, as a result, the petitioner fell down and the offending vehicle ran over the right leg of the petitioner. Consequently, the claimant sustained crush injuries, fracture of leg and other grievous injuries. He took the treatment in Government Hospital in Proddatur. He suffered disability due to injuries and also suffered loss of earnings and loss of job. The petitioner was 42 years old and as a Mastry he used to earn Rs.6,000/- per month.

6. The 2nd respondent/appellant – Insurance Company filed counter contending that the accident was not occurred as mentioned in the petition. The driver of the offending vehicle was not negligent.

R1 vehicle was insured with the 2nd respondent as on the date of the accident. The driver of R1 has no valid and effective driving licence at the time of accident, thereby the 1st respondent violated the terms and conditions of the policy. Therefore, the 2nd respondent/appellant is not liable to pay compensation. The claim is excessive.

It is further contended that the petitioner has not suffered multiple injuries and amputation. The accident was due to the negligence of the petitioner in walking and pushing his motorcycle.

7. The Tribunal, having considered the pleadings and after hearing, settled the following issues for trial :

1. Whether the accident occurred due to rash and negligent driving of the concrete lorry bearing No.AP 03 U 4379?
2. Whether the petitioner is entitled to any compensation? If so, from whom?
3. To what relief?

8. For the sake of convenience, the claimant and appellant in M.A. C.M.A. No.944 of 2011 is referred as appellant and R2 in O.P. No.1166 of 2008 and the appellant in M.A. C.M.A. No.1098 of 2011 is referred as respondent.

9. On behalf of the appellant, P.Ws.1 to 3 were examined and Exs.A1 to A9 and Ex.X1 were got marked. On behalf of the respondent, R.W.1 to R.W.3 were examined and Exs.B1 to B6 were got marked.

10. The learned counsel for the appellant/claimant contended that the offending vehicle is a light motor vehicle and the driver possessed light motor vehicle driving licence and hence he is competent to drive it, whereas the respondent/insurance company contended that the vehicle involved in this case is heavy goods transport vehicle which requires heavy goods vehicle transport licence and the driver possessed only light motor vehicle non-transport driving licence. The 1st respondent-insured, knowing fully well that the driver does not possess valid licence, entrusted the vehicle to him, thereby violated the terms and conditions of Ex.B1 policy.

11. The claimant himself is examined as P.W.1. His evidence is that on 19.3.2008 at 9 AM while he was going by walking with Hero Honda CD 100 motorcycle bearing No.AP 04 8761 on the extreme left side of the road and when he reached near culvert of Mylavaram south canal in the village limits of Matipadu, Kadapa District, at the same time, one concrete lorry bearing No.AP 03 U 4379, driven by its driver with high speed in rash and negligent manner without following traffic rules and signals, dashed the motorcycle. Ex.A1 is the certified copy of the F.I.R. in crime No.9 of 2008 and Ex.A2 is the certified copy of the charge-sheet and Ex.A4 is certified copy of judgment in C.C. No.163 of 2008. Ex.A1 read with Ex.A2 goes to suggest that the S.H.O., after receiving general memo No.116 of 2008 dated 19.3.2008 at 6.30 PM from OPPS Government Hospital, Proddatur, rushed to the hospital and recorded the statement.

The Investigating Officer, after thorough investigation, filed the charge-sheet under Ex.A2, basing on Ex.A1 - F.I.R. and found that on 19.3.2008 morning at 9.00 AM when the construction of lining work is going on, P.W.1, who is attending to the same work as Mastry, found a motorcycle bearing No.AP 04 8761, which is kept on the ridge of the said canal causing obstruction to their work, took the same to keep it aside by pushing. At that time, B.Venkatesh, being the driver of Ajax Fiori 4 Cu.M. self loading mobile concrete mixture machine vehicle bearing No.AP 03 U 4379, drove it suddenly upon P.W.1 in rash and negligent manner without giving any caution, as a result, the said concrete mixture vehicle ran over the motorcycle and also on the right leg of P.W.1, as a result, the motorcycle was damaged and P.W.1 received crush injury to his right leg.

12. From the evidence of P.W.1 read with Exs.A1 and A2 and Ex.A4 - certified copy of the judgment in C.C. No.163 of 2008, it is clear that the driver of the concrete mixture admitted the offence and he was sentenced to pay fine, that means C.C. ended in conviction. Accordingly, the Tribunal, having considered the evidence of P.W.1 and also the evidence in cross-examination of P.W.1 read with Exs.A1, A2 and A4, came to the conclusion that the accident was due to rash and negligence of the rider of the concrete mixture vehicle. Had the rider of concrete mixture vehicle drove it with care and caution and observed the mastry involved in the same work was removing the motorcycle, he would have avoided the

accident by slowing down or stopping the concrete mixture vehicle. Because of the negligence of the driver of R1, the accident occurred, therefore, the finding of the Tribunal that the accident was due to rash and negligence of the driver of the concrete mixture bearing No.AP 03 U 4379 is legal, valid and do not suffer from any legal infirmities warranting interference.

13. The main contention of the Insurance Company is that the driver does not possess valid and effective driving licence to drive the offending vehicle at the time of the accident.

Whereas, the claimant contended that the driver was competent to drive the light motor vehicle of non-transport category i.e., concrete mixture vehicle. The evidence of P.W.1 is that while he was going by walk with Hero Honda CD 100 motorcycle bearing No.AP 04 8761 on the extreme left side of the road, near culvert of Mylavaram South Canal in the village limits of Matipadu, Kadapa District, at the same time, the concrete mixture lorry bearing No.AP 03 U 4379 came with high speed in rash and negligent manner and dashed the motorcycle, as a result, he fell down and tyres of the concrete mixture vehicle ran over on his right leg. During cross-examination it is clarified that the accident occurred near Hindustan Ratan Joint Company where he worked. His company is doing work of Mylavaram South canal and he was working as a mason in that company. He was supervising the work of labours at the time of the accident. For the suggestion with regard to the driving licence of the offending vehicle, P.W.1 stated that he does know whether the driver was holding a valid driving licence at the time of the accident. According to the evidence of P.W.1 and Ex.A1 – copy of the F.I.R., Ex.A2 – charge-sheet, P.W.1 was engaged for the construction of lining work of canal at Malepadu village fields by the contractor, Hindustan Ratan Joint Company for construction of lining work to the Mylavaram south canal. While so, on 19.3.2008 at 9 AM while the construction of lining work was going on, P.W.1, who is attending to the said work as a mastry, found a motorcycle bearing No.AP 04 8761, which was kept on the ridge of the said canal causing obstruction to their work, took the same to keep it aside by pushing, at that time, the driver of Ajax Fiori Cu. M self-loading mobile concrete mixture machine vehicle bearing No.AP 03 U 4379 drove it suddenly upon P.W.1 in rash and negligent manner without giving any caution, as a result, the concrete mixture vehicle ran over the motorcycle and also on the right leg of P.W.1. So, the vehicle involved in this case is a self-loading concrete mixture vehicle bearing No.AP 03 U 4379.

14. Now, coming to the evidence of respondents, R.W.1 – Assistant Manager (Legal) of the appellant in MACMA No.1098 of 2011 deposed that the driver of the concrete mixing vehicle bearing No.AP 03 U 4379 was not holding the valid and effective driving licence at the time of the accident and he was not qualified for holding or obtaining such driving licence and does not satisfy the requirement of the Rule 3 of the Central Motor Vehicles Rules 1989. The owner –

1st respondent has handed over the possession of the vehicle knowingly well that the driver of the vehicle involved in the alleged accident does not possess valid and effective driving licence, thereby contravened the provisions of the Motor Vehicles Act and rules thereunder and produced Ex.B2 – driving licence extract. To substantiate the same, summoned and examined the Senior Assistant of Deputy Transport Commissioner's Office, Chittoor Sri C.S.Padmaja Devi as R.W.2. Her evidence is that the Regional Transport Officer, Office of the Deputy Transport Commissioner, Chittoor authorized her to give evidence and in pursuance of such Ex.B3 - authorization, she produced Ex.B4 and Ex.B5 of the vehicle bearing No.AP 3U 4379 and gave evidence.

15. The Junior Assistant in RTA Office, Mahaboobnagar Sri Mohammed Khaja produced Ex.B6 – extract of the driving licence of B.Venkatesh Goud, driver of the offending vehicle.

16. A reading of Ex.B2, B4, B5 and B6 with the evidence of R.Ws.1 to 3 goes to suggest that Ex.B2/B6 - driving licence bearing No.DLFAP022166932006 was issued to the Venkatesh Goud, son of Narasimhulu on 15.7.2006. He possessed LMV MCWG non-transport driving licence valid up to 14.7.2026.

17. Ex.B4 is the form-24 issued to the vehicle bearing No.AP 03 U 4379 which was registered on 13.6.1991 and according to which the registered owner was R.Munaswamy with effect from 7.7.2001. Previous registration was at RTO, Bangalore. It was the hire purchase

vehicle and it is a diesel and cubic capacity is 6540, wheel base is 4470 unladen weight is noted as 6450. GVW (C) 16,200 Kgs., GVW (R) 16200 Kgs. Ex.B5 is the goods carriage permit issued to R.Munaswamy, the registered owner for the vehicle bearing No.AP 03 U 4379 and wherein the unladen weight of the vehicle is also mentioned as 6450. The gross weight of the vehicle is noted as 16,200, the permit was valid up to 20.6.2013 which was renewed with effect from 12.5.2008. During cross-examination, R.W.2 admitted that unladen weight of the offending concrete mixture was 6450 kgs. The unladen weight of the heavy vehicle should be above 6000 kgs and the medium vehicle will be above 1500 kgs. If unladen weight of the vehicle is below 6000 kgs, it will come under the light motor vehicle and for the suggestion that whether the heavy motor vehicle should contain unladen weight of 15000 kgs and medium vehicle should be 10000 to 15000 kgs and LMV should be below 10000 kgs, he gave evasive answer saying that "I do not know", but he admits that weight of the vehicle will be determined by the unladen weight of the vehicle.

18. The facts established from the evidence of R.Ws.1 and 2 supported by Ex.B4 and B5 goes to suggest that the unladen weight of the offending concrete mixture bearing No.AP 03 U 4379 is 6450 kgs and it was a concrete mixture, but not a lorry. In Ex.B4 the vehicle was classified as goods carriage HMV diesel with unladen weight of 6450 kgs.

19. In support of the contention of the Insurance Company that the driver had no valid and effective driving licence, it relied on a decision in ***Oriental Insurance Company Limited Vs. Angad Kol*** (2009 ACJ 1411) wherein the Apex Court held that the definition of LMV brings within its umbrage both 'transport vehicle' or 'omnibus' but a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists. The Apex Court further held that we also find that the District forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle.

20. In the Case of ***National Insurance Co. Ltd vs. Mrs. Kanti Devi & Ors*** (2005 ACJ 1544) the Apex Court held that certainly the insurance company shall raise an objection that the driver does not possess valid and effective licence, but it would be for the insurance company to prove that the insured did not take care and caution to verify the genuineness or otherwise of the licence held by the driver. The High Court did not go into the relevant question at all and relying on ***United India Insurance Co. Ltd., v. Lehru and Ors.*** (2003 (3) SCC 338) held that the insurer has to pay the amount and recover from the insured. In the case of ***Sardari v. Sushil Kumar*** (2008 ACJ 1307) the Apex Court held that the driver admittedly has no knowledge to drive a tractor and the High Court held that the claimants are entitled for

compensation from the driver and owner of the vehicle. The Insurance Company was rightly exempted from the liability.

21. In the case of ***Mukund Dewangan v. Oriental Insurance Co. Ltd.*** ((2016) 4 SCC 298) the Apex Court held as follows :

> "In ***Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.*** ((1999) 6 SCC 620) in para 10, ***S.Iyyapan v. United India Insurance Co. Ltd.*** ((2013) 7 SCC 62), ***Kulwant Singh v. Oriental Insurance Co. Ltd.*** ((2015) 2 SCC 186) and ***Nagashetty v. United India Insurance Co. Ltd.*** ((2001) 8 SCC 56), the view taken is that when driver is holding licence to drive light motor vehicle, he is competent to drive transport vehicle of that category; whereas in ***New India Assurance Co. Ltd. v. Prabhu Lal*** ((2008) 1 SCC 696) the view taken is that before 2001 also it was necessary for a driver possessing licence to drive light motor vehicle to obtain endorsement to drive transport vehicle of that category; whereas in ***National Insurance Co. Ltd. v. Annappa Irappa Nesaria*** ((2008) 3 SCC 464), this Court laid down that before 28.3.2001 there was no necessity for holder of licence to drive light motor vehicle to have endorsement to drive transport vehicle; whereas in ***New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir*** ((2008) 8 SCC 253) and ***Oriental Insurance Co. Ltd. v. Angad Kol*** ((2009) 11 SCC 356), the view taken is that it is necessary for the holder of light motor vehicle licence to obtain specific endorsement on licence, to drive transport vehicle of the light motor vehicle weight as provided in Section 2 (41).
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> Thus, there appears to be a conflict in the decisions of this Court with respect to the pre-amended position and also after amendment has been effected in the forms in 2001. In view of the aforesaid discussion, the following questions are required to be referred to the larger Bench.

1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?

2. Whether "transport vehicle" and "omnibus" the "gross vehicle weight" of either of which does not exceed 7500 kg would be a "light motor vehicle" and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg?

3. What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of Section 10 (2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of the expression "transport vehicle" under Section 10(2)(e) is related to the said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of amendment of Form 4 as to operation of the provisions contained in Section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" has been changed?"

And accordingly ordered to post the matter before the Hon'ble Chief Justice of India to constitute a larger bench in order to resolve a conflict in the views expressed by different benches of the Apex Court.

22. The larger bench of the Apex Court after reference of the said case decided the same on 3.7.2017, reported in ((2017) 14 SCC 663), where the Apex Court answered the questions which are referred to the larger bench as follows :

(i) 'Light motor vehicle' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. that is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), medium passenger motor vehicle in Section 10(2)(f), heavy goods vehicle in Section 10(2)(g) and "heavy passenger motor vehicle" in Section 10(2)(h) with expression 'transport vehicle' as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e., light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

23. From the above decision it is very clear that the light motor vehicle as defined under Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2 (21) read with Section 2(15) and 2(48) and such transport vehicles are not excluded from the definition of light motor vehicle by virtue of

amendment act 54/1994. The transport vehicle including motor cab or tractor or road roller of which unladen weight does not exceeded 7500 kgs, the holder of driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d), is competent to drive such vehicles including transport vehicle type of concrete mixture vehicle which laden weight is 6450 kgs as it does not exceed 7500 kgs, even though it was classified as goods carriage/HMV. That is to say, that no separate endorsement and the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. The effect of amendment of form-4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence of transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class. Relying on the same decision, I am of the considered view that the driver, who possessed light motor vehicle driving licence non transport, is competent to drive the offending concrete mixture vehicle bearing No.AP 03 U 4379 without any endorsement to drive the transport vehicle. Accordingly, the 1st respondent has not violated the provisions under Sections 3 and 10(2)(e) of the Motor Vehicles Act or the terms and conditions of Ex.B1 policy and the finding of the trial Court that the driver possessed valid and effective driving licence and is competent to drive the offending vehicle is legal, valid and do not suffer from any legal infirmities warranting interference.

24. The further contention of the claimant/appellant is that the claimant being a mason used to earn Rs.6,000/- per month and the disability suffered by P.W.1 was 50%, thus, loss of earning capacity is 100%, since he is a mason and the trial Court should have awarded the amount claimed as compensation.

25. *Per contra* the Insurance Company/appellant in M.A.C.M.A. No.1098 of 2011 contended that the Tribunal, having held that the medical expenses incurred is Rs.5,063/-, erred in awarding Rs.25,000/- towards medical expenses and Rs.1,00,000/- towards cost of artificial limb and interest at 7.5%.

26. P.W.1 – Injured/claimant's evidence is that the tyres of the offending concrete lorry ran over his right leg and he sustained (i) one crush injury to right leg; (ii) laceration on right knee joint; (iii) compound of fractures on right tibia and left leg and grievous injuries all over the body. Immediately, he was shifted to Government Hospital, Proddatur, Kadapa District as an inpatient, later, on the advice of the Doctors, he was shifted to NIMS Hospital, Hyderabad, where he was treated as inpatient and his right leg was amputated and left leg was treated by way of PoP and he was in the Hospital as inpatient for more than 40 days, later he has been taking follow up treatment. His further evidence is that though the Medical Board, Government Hospital, Vijayawada issued Ex.A7 - disability certificate

assessing the disability at 50%, because of the fracture injuries to both legs and amputation of right leg, he was totally bed ridden and there is 100% loss of income. During cross examination, P.W.1 was cross-examined by the Insurance Company at length. During cross-examination he denied the suggestion that he did not lose his leg in the accident and Ex.A7 does not bear the date and voluntarily the date was noted on the back side of the certificate and further denied that Ex.A7 is created for the purpose of this case.

27. P.W.2 is a Professor of Orthopaedic at OGH by the time of the treatment. After retirement, he is working as Professor of Orthopaedic at Medi City Institute of Medical Sciences at Ganpur, Medchal Mandal, R.R. District. On 20.8.2009 he issued disability certificate – Ex.A8. At the time of examination on 20.8.2009, he found right lower limb was amputated below knee and accordingly he estimated the disability at 50%, which is partial and permanent. Before issuing disability certificate, he perused the discharge card issued by NIMS under Ex.A5. According to Ex.A5, P.W.1 admitted in the Hospital on 20.3.2008 and discharged on 26.4.2008. Ex.A3 is the wound certificate issued by the Civil Assistant Surgeon, District Hospital, APVVP, Proddatur, Kadapa District, where the injuries were recorded.

28. Diagnosis of x.ray No.606, dated 19.3.2008 of the right leg noted in Ex.A3 reveals fracture of both bones. X.ray dated 20.3.2008 shows grade-III compound comm. fracture of both bones of

right leg. The same injuries are reflected in Ex.A5 - discharge summary issued by NIMS Hospital i.e., extensive crush injury, lateral malleolus to left leg. While discharging, the NIMS authorities directed not to walk/stand/bear weights until further advice, to report immediately if severe pain and daily dressing for amputation wound. The medical board issued Ex.A7 - disability certificate assessing the disability at 50%.

29. Though P.W.2 was cross-examined at length, the prosecution could not elicit any favourable material to discard the evidence of P.W.2. During cross-examination, P.W.2 admitted that he is not having clinical record to show that the petitioner was examined clinically. Even though he examined P.W.1, he did not maintain any record. He also denied the suggestion that the petitioner can perform his normal activities as earlier to the accident. He also denied the suggestion that he is not competent to issue disability certificate and it is only medical board that can issue the disability certificate.

30. The petitioner also filed Ex.A7 - disability certificate issued by the Medical Board which also certified disability as 50%.

31. The clinching evidence of P.Ws.1 and 2 corroborated and supported by Ex.A3 - wound certificate, Ex.A5 – discharge summary, Ex.A7 – disability certificate and Ex.A8 medical certificate will establish that the petitioner sustained one crush injury to right leg; laceration on right knee joint; and compound of fractures on right tibia and left leg and grievous injuries all over the body and the disability is

50% because right lower limb was amputated below the knee and both bones of the left leg were also fractured and while discharging P.W.1 from the hospital, the NIMS authorities also noticed the severity and gravity of the injuries and cautioned P.W.1 to consult immediately if he noticed any pain in the amputated leg or fractured leg and he was in the NIMS Hospital as inpatient from 20.3.2008 to 26.4.2008 i.e., for a period of one month seven days and according to P.W.1, he was inpatient for 45 days and on another day he was inpatient in the Government Hospital, Proddatur on 19.8.2008.

32. The evidence of P.W.1 corroborated by P.W.2 and supported by Ex.A7 and Ex.A8 goes to show that the right leg of the claimant was amputated below knee and his clinching evidence is that he required one artificial leg which costs Rs.1,00,000/- and it will work for five years and later he has to purchase another leg during his life time. Accordingly, he required a sum of Rs.2,00,000/- towards cost of the artificial leg. P.W.3 is a Prosthetist and Orthotist at Endolite India Limited, Hyderabad. In response to Ex.X1 authorization, she attended the Court to give evidence and produced Ex.A9 - quotation dated 21.4.2010 issued by the Manager of Endolite India Limited. Her evidence is to the extent that she examined P.W.1 before issuing quotation, estimated the cost of the artificial limb at Rs.1,02,500/- which will stand for a period of 5 or 6 years. After 5 or 6 years, entire artificial limb need not be changed, only some components need to be changed after 5 or 6 years. During cross-

examination, P.W.3 clarified that having examined Yedukondalu/P.W.1, her colleague Swetha Padma issued Ex.A9 and denied the suggestion that to help P.W.1, she is deposing falsehood. The Tribunal, having considered the corroborative evidence of P.Ws.1 to 3 and injuries sustained as evident from Exs.A3, A5, A7 to A9, rightly granted Rs.1,00,000/- towards the expenses of artificial limb, which is legal, quite reasonable and do not suffer from any legal infirmities warranting interference.

33. In the case of ***Ramachandrappa v. Royal Sundaram*** ((2011) 13 SCC 236) it was held that "the appellant was working as coolie and in and around the date of the accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4500 per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500 to Rs.3000 per month. We, therefore, accept his statement that his monthly earning was Rs.4500."

34. The evidence of P.W.1 is that by the date of the accident on 19.3.2008 he was 43 years old and as a mastry/mason working in Hindustan Ratan Joint Company and Kalamalla and used to earn Rs.6,000/- per month excluding food and clothing as the company used to provide the same. The claimant/appellant as per the sole testimony of P.W.1 was 43 years old and met with an accident on 19.3.2008 in which he sustained fracture of both bones of the right leg

which was amputated below knee and there is fracture to the left leg. Absolutely there is no rebuttal evidence to the evidence of P.W.1.

35. The insurance company examined R.Ws.1 to 3. R.W.1 is Assistant Manger-Legal of 2nd respondent. R.W.2 is Senior Assistant in Deputy Transport Commissioner's Office, Chittoor. R.W.3 is the Junior Assistant in RTO office, Mahaboobnagar. Though P.W.1 stated that he was working in Hindustan Ratan Joint Company and Kalamalla, he did not produce any documents in proof of his income. There is only oral evidence of P.W.1. In the absence of any such evidence, the salary/wages of a mason/mastry can be assessed at Rs.4,500/- per month taking into consideration the then existing wages of a mason. But, the Tribunal, did not consider the aspect of disability at all. Though there is claim of the claimant that in Exs.A7 and A8, his disability was assessed at 50% and thus loss of earning is at 100%, there is no discussion of these facts at all in the award of the Tribunal, but it simply observed that P.W.2 spoke to the disability sustained by P.W.1. Ex.A5 is the discharge record of P.W.1 issued by NIMS. The amputation of right leg was also mentioned in the document. It is corroborated by the photograph appearing in Ex.A7. Amputation is a serious injury. Even in the absence of evidence of P.W.2, amputation results in permanent disability and the Tribunal has awarded Rs.75,000/- towards injuries, which clearly shows that the Tribunal had not applied its mind either to the pleadings or documentary evidence or case law relied on by the claimant.

36. 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.

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 ***Santhoshi Devi Vs. National Insurance Co. Ltd.*** ((2012) 6 SCC 421) and with regard to multiplier, relied on ***Sarla Verma v. DTC*** ((2009) 6 SCC 121) which was upheld in ***Santhoshi Devi case*** (supra). In the said case the claimant was a vegetable vendor and there the Apex court applied the decision in ***Santhoshi Devi Case*** (supra) and also para 24 of the ***Sarla Verma case*** (supra) 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.

37. In the instant case the claimant suffered permanent and partial disability of 50% as per the evidence of P.Ws.1 and 2 and Exs.A7 and A8 - disability certificates and the right leg is amputated below knee.

38. In the case of ***Syed Sadiq*** (supra) the claimant was vegetable vendor aged 24 years and sustained injuries to lower end of right femur and his right leg was amputated and the disability of earning was taken as 85% to determine the loss of income. It was held therein that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

39. In the instant case, the appellant/claimant was working as Mastry/Mason which requires supervision of work done by the coolies

and also construction of brick walls, plastering and laying of slabs, which require mobility. However, the appellant is not confined to construction of walls, plastering, laying of slab and other like construction works, but he was supervising the construction works as per the evidence of P.W.1 which requires mobilization of masons and labour which requires 100% mobility which otherwise would be extremely difficult for P.W.1 with an amputated leg. Amputation of right limb is often equal to loss of livelihood. However, still he is capable of supervising the masonry work once he took up the job of mastry. I am of the considered view that though the disability as assessed in Exs.A7 and A8 is 50%, the proper disability would be at 85% to determine the loss of income. By applying ***Sarla Verma's case*** (supra) considering the age of the claimant as 43, the relevant multiplier applicable is '14'.

40. 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.

41. Having considered that the appellant/claimant is labour with fixed income/emoluments and was a 43 years old, he is entitled

to 30% increment in the future prospects of the income based upon principle laid down in the ***Santhoshi Devi's case*** (supra).

42. As already discussed above, the income of the deceased is Rs.4,500/- per month. After adding 30% of salary as future prospects, it would come to Rs.5,850/- per month (4500 + 1350) or Rs.70,200/- per annum. After applying the multiplier '14', it works out to Rs.9,82,800/- and 85% of which comes to **Rs.8,35,380/-**.

43. Besides that the claimant/appellant is entitled for **Rs.5,000/-** towards extra-nourishment as he was in the hospital for about one month seven days and in the evidence P.W.1 deposed that he engaged an attendant by paying Rs.3,000/- per month to look after him. The said amount as claimed was awarded towards attendant charges for the period for which he was in the hospital, which comes to **Rs.3,800/-**.

44. Though P.W.1 in the evidence stated that he incurred Rs.50,000/- towards medical expenses, he filed Ex.A6 – medical bills which comes to Rs.5,063/-. The treatment in Government Hospital is free of cost. While discharging, they prescribed medicines for five days, 15 days and 1 month. Certainly he incurred some money towards medicines, though he could not produce any proof of such medical expenses, therefore, I felt an amount of **Rs.25,000/-** granted towards medical expenses by the Tribunal is just compensation which does not require any modification. The Tribunal also awarded Rs.1,00,000/- towards artificial limb and P.W.3 deposed that they

have issued Ex.A9 quotation for Rs.1,02,500/- and there is no need for change of entire limb, but some components need to be changed after 5 or 6 years. Therefore, the award of **Rs.1,00,000/-** towards artificial limb is legal and do no suffer from any legal infirmities or illegalities warranting interference, therefore, the same is accepted.

45. The Tribunal did not award any amount towards damage to the clothing, since P.W.1 is involved in road accident, he sustained fracture of both bones of the right leg and left leg besides other grievous injuries as mentioned in Exs.A3 and A5, and certainly there would be damage to the clothing. Accordingly, P.W.1 is entitled for an amount of **Rs.1,000/-** towards damage to the clothing. Loss of earnings is considered and future prospects also awarded to the petitioner by considering the loss of earnings at 85%. Besides that, I also award **Rs.10,000/-** towards pain and sufferance and **Rs.4,000/-** towards transportation which the Tribunal did not grant.

Thus, in all the claimant is entitled to Rs.9,84,180/- towards compensation.

Therefore, the Award is modified and the claimant/appellant is entitled to **Rs.9,84,180/- in all**.

46. 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 claimant is

entitled to Rs.4,00,000/-, but, whereas, as per law and facts the claimant is entitled to the compensation of Rs.9,84,180/-.

47. In the facts and circumstances discussed above and findings therein, I am of the considered view that the Tribunal came to the right conclusion that the driver is competent to drive the offending vehicle and there is no violation of Sections 3 and 10 (2)(e) and Ex.B1 policy. By virtue of Ex.B1 policy, the appellant/2nd respondent has to indemnify the liability of the 1st respondent. The claimant is entitled for a total compensation of Rs.9,84,180/-.

48. Accordingly, M.A. C.M.A. No.944 of 2011 filed by the claimant is allowed with costs, while setting aside and modifying the order and decree dated 04.2.2011 in O.P.No.1166 of 2008 on the file of the XXI Additional Chief Judge-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, and passed the modified award for Rs.9,84,180/- against the respondents 1 and 2 jointly and severally with subsequent interest at 7.5% from the date of petition i.e., 23.5.2008 till the date of deposit or realization, which shall be deposited by the 2nd respondent, 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. On such deposit, the claimant is permitted to withdraw the same.

49. The appellant/claimant is 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.

50. Subject to the above modification and irregularities committed by the Tribunal, M.A. C.M.A. No.1098 of 2011 filed by the Insurance Company is dismissed with costs.

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

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

JUSTICE N. BALAYOGI

June, 2018
skmr