

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T.RAJANI

M.A.C.M.A.Nos.812, 722, 864 AND 629 OF 2015

COMMON JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

1. M.A.C.M.A. No.812 of 2015 is filed by the claimants seeking enhancement of compensation awarded in M.V.O.P.No.927 of 2008 on account of death of one Gautam Rai, while M.A.C.M.A.No.722 of 2015 came to be filed by the Insurance Company, questioning the very Award in the said M.V.O.P. M.A.C.M.A.No.864 of 2015 is filed by the injured seeking enhancement of compensation awarded to the injured-Pooja Rai in M.V.O.P.No.930 of 2008, while M.A.C.M.A.No.629 of 2015 is filed by the Insurance Company questioning the Award in the said M.V.O.P.

2. The Above four appeals came to be filed pursuant to an accident that took place on 17.02.2008 at 2.00 a.m., within the limits of Moinabad Police Station. Taking M.A.C.M.A.No.722 of 2015, filed by the Insurance Company, as a lead petition, the matters are being disposed of by this Common Order.

3. The facts in issue are as under:-

On 17.02.2008 at about 2.00 a.m., while the first claimant along with her husband were proceeding in a Car bearing No.A.P.09-

VN-T/R-4236, driven by one Mukesh Goel, from Moinabad towards Hyderabad and when they reached near REVL factory at Azeez Nagar, the Driver of the Car drove the vehicle in a rash and negligent manner, with high speed, lost control over the Car and dashed against a stone heap and to the tree which was by the side of the road. As a result of which, all the inmates including the Driver sustained injuries and the Car was also completely damaged. Immediately thereafter, the first claimant Pooja Rai (injured) and her husband-Gautam Rai (deceased) were shifted to Apollo Hospital, Jubilee Hills, where Gautham Rai died while undergoing treatment. The deceased was treated as an in-patient from 17.02.2008 to 24.02.2008. In respect of the sad incident, a case in Cr.No.30 of 2008 was initially registered under Section 337 IPC and later altered to Section 304-A IPC. The claimant No.1 is the wife, claimant Nos.2 and 3 are children of the deceased. It is said that the deceased, who was aged about 34 years at the time of the accident, was hale and healthy. Prior to the death, the deceased was working as a Director of International Consulting Operations, India with Phase Forward Europe Limited, U.K. The deceased was a Director Consulting Services India and was looking after the Company operations and was also responsible for setting up Indian Operations and managing the operations in India since last 7 months. He was employed by Phase-Forward Limited, Voyagar Place,

Shoppenhangers Road, Maidenhead, Berkshire, U.K. Prior to the said assignment, the deceased was a Senior Analyst Programmer with Red Brigade (UK). It is said that the deceased was earning nearly 5000 pounds per month. It is said that due to the death of the deceased, the first claimant lost her life partner and happiness in life and that the two children lost their father's love and affection. Due to demise of the deceased, the family members lost their only source of livelihood. It is pleaded that huge amounts have been spent towards medical expenses. The first respondent is the owner of Skoda Car AP-09-BN-T/R-4236 and the respondent No.2 is Insurer of Skoda Car. Thus both the respondents are said to be severally and jointly liable to pay compensation of Rs.6 Crores as claimed in the application.

4. The first respondent filed his counter denying the allegations made in the petition against him and submitted that the same are required to be proved. He admits that on the intervening night of 16/17.02.2008, the first claimant and her husband-Gautam Rai were traveling in a Car bearing No.AP-09-BN-T/R-4236, which was driven by the first respondent, who is also proprietor of the Car and was in the Car along with his wife. According to him, inspite of his best efforts, the accident could not be avoided and there was no negligence on the part of the driver of the Car. It is pleaded that

at the place of accident, there was a curve and no signals indicating existence of the curve; that there was no road divider at the place of accident and that the road was not clearly visible to the naked eye; that because of the poor visibility of the road, more particularly due to curve and in the absence of street-lights, the car dashed against the stones and tree. According to him, all the inmates of the Car received injuries and the Car also got damaged. He further submits that he is the owner of the Car; that the said vehicle was insured with the second respondent and the policy was in force at the time of the accident.

5. A counter came to be filed by the second respondent disputing the averments made in the claim petition. They deny not only the manner in which the accident took place but also the presence of the injured in the Car. They also denied the nature of the injuries received, and the deceased being shifted to Apollo Hospital and put on ventilator for a period of 8 days before he succumbed to injuries. The age, income and avocation of the deceased, apart from the education, academic qualification and income of the deceased was also denied. The registration of crime by the Moinabad Police Station against the driver of the Car was also denied. This counter came to be filed in the month of September, 2008. An additional counter came to be filed by the second respondent in the year 2011.

In the said counter, a new plea was taken stating that the alleged accident occurred due to hit and run by an unknown lorry, but in collusion with the owner of the offending vehicle, who is no other than a close friend of the deceased, a false case has been filed against the driver of the offending car. Since the accident was due to hit and run by a four wheeler, it is urged that there is no negligence on the part of the driver of the Car. Finding fault with the investigation and the contents of the charge-sheet, it is stated that due to collusion between the claimants and the first respondent, distorted facts are mentioned in the charge-sheet, finding fault with the driver of the Car as responsible for the incident. Though the informant by name Sri K.Gopala Krishna Rathod lodged a report but the person, who accompanied him, namely Naresh, PCO-4109, has not been examined by the police, for which an adverse inference has to be drawn.

6. A rejoinder came to be filed by the claimants disputing the allegations made in the counter, more particularly with regard to the manner in which the accident took place. It is also stated that if really the allegations of the second respondent-Insurance company are true, the respondent No.1 would not have kept quiet and invite trouble for himself and face criminal prosecution leaving the lorry. According to him, the respondent No.1 is no way benefited in setting

up a false case. It is further stated that there is no reason for the Home-guard, who was standing in front of REVL factory, where the accident took place, to give a false report immediately on the next day morning. It is stated that the involvement of a third vehicle in the accident is absolutely false and that the accident took place due to rash and negligent driving by the driver of the car.

7. Basing on the above pleadings, the trial court framed the following issues for trial :

1. Whether the accident resulting in death of deceased Gautam Rai occurred owing to the rash and negligent driving of the driver of the Skoda car bearing No.AP-09-BN-T/R-4226?
2. Whether the petitioners are entitled for compensation and, if so, to what amount and from whom?
3. To what relief?

8. In support of their case, the claimants examined P.Ws.1 to 3 and got marked Exs.A-1 to A-25, while the respondent/Insurance Company examined R.Ws.1 to 5 and got marked Exs.B-1 to B-17. The court got marked Exs.X-1 and X-2 through P.W.3.

9. Considering the evidence on record, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the vehicle. Taking the salary of the deceased at Rs.2,00,000/-

per month, after deducting 40% towards Income Tax, arrived at a sum of Rs.14,40,000/- as net emoluments per year. Since the dependents are three in number, the trial court deducted 1/3rd towards personal expenses, which would come to Rs.9,60,000/-. In view of the judgment of Sarla Verma, the multiplier that was adopted for calculating the loss of dependency was 16, and the amount which the petitioners were held entitled to towards loss of dependency, was assessed at Rs.1,53,60,000/-. Apart from that, the trial court also awarded Rs.25,000/- towards consortium, Rs.25,000/- towards funeral expenses and amount of Rs.10,000/- towards transportation charges. Thus, in all the trial court awarded a sum of Rs.1,54,20,000/- with interest at the rate of 6% p.a., as compensation. Challenging the same, the above appeals came to be filed.

10. Sri T.Mahender Rao, the learned counsel for the appellant/Insurance Company in M.A.C.M.A.No.722 of 2015, which was taken as a lead appeal, would submit that the finding of the trial court with regard to the manner in which the accident took place cannot be accepted. According to him, firstly, the material on record shows that the incident in question took place due to involvement of a third vehicle viz., a lorry, which was said to have hit the offending vehicle from the back side and then left the scene.

Secondly, the policy does not cover the claim of the claimants. Though initially, the learned counsel for the Insurance Company urged that the policy does not cover the inmates of a private car, but however, at a later point of time, states across the bar that he is not pressing the said point. The third ground urged by the learned counsel for the Insurance Company is with regard to the quantum of compensation.

11. From the above, it is clear that the learned counsel for the Insurance Company is pressing only two points. The first one being the manner in which the incident took place and the second relates to quantum of compensation. Since the counsel is not pressing the issue relating to the insurance coverage, we do not intend to dwell into the said aspect.

Manner in which the accident took place in MACMA Nos.812 of 2015 and 722 of 2015?:

12. Coming to the manner in which the accident took place namely as to whether it was a case of hit and run or whether the accident took place due to rash or negligent driving by the driver of the Car, it would be appropriate to refer to the evidence available on record.

13. The First Information Report, which is placed on record as Ex.A-1, came to be lodged on 17.02.2008 at about 7.00 in the morning and the said report was given by one K.Gopala Krishna

Rathod, Home-Guard, who was on night duty and was near REVL factory, Azeez Nagar at that point of time. As he was an eyewitness to the incident, he was examined as P.W.3. In his evidence in chief, he deposed that on 17.02.2008 at about 2.00 a.m., the driver of the Skoda car bearing No.AP-09-BN-T/R-4236 which was proceeding to Hyderabad from Moinabad, drove the vehicle in a rash and negligent manner in front of the REVL factory, lost control over the vehicle, dashed to the stones and then to a tree. All the inmates of the Car including the driver of the car received serious injuries. His enquiries revealed the names of the said persons as Mukesh Goyal, Gautam Rai, Puja Rai and Nandini Goyal. Immediately thereafter, himself and one Naresh, PCO shifted the injured persons in 108 Ambulance to Apollo Hospital. Thereafter, on the next day morning he lodged a report, basing on which a case in Cr.No.30 of 2008 of Moinabad Police Station came to be registered. After registration of the crime, police investigated into the matter and filed a charge-sheet, which is placed on record as Ex.A-2. In the charge-sheet, it was categorically stated that the driver of the car was responsible for the accident. While undergoing treatment, the injured-Gautham Rai died on 24.02.2008. The inquest and Post-Mortem report, which are marked as Exs.A-3 and A-4 not only establish the manner in which incident took place but also the injuries sustained by the injured and

also by the deceased. Ex.A-6 is the scene of offence panchanama along with the sketch, showing the presence/location of the Car and the tree to which the car dashed. It also shows the existence of REVL factory opposite to the scene of offence.

14. P.W.3 was subjected to lengthy cross-examination by the learned counsel for the Insurance Company. It was elicited that he was working in Moinabad Police Station since 2007 as Home-guard. His duty on that day was from 9.00 p.m., to 6.00 a.m., on the next day. He admits that the fact of he along with another P.C. doing patrolling duty on their motorcycles was not mentioned in the First Information Report or in the chief-affidavit. He also admits that there are no indicators near the place of accident and there are no speed breakers. According to him, there is a slight curve at the place of the incident and there is no road divider. It was elicited from him that he has witnessed the accident from a distance of 20 feet. It was further elicited that at the time of the accident, he along with one Naresh, a Police Constable were standing near REVL factory. According to him, the accident occurred on 17.02.2008 at about 2.00 a.m., wherein the deceased, his wife and other inmates received injuries. They were removed by breaking open the doors of the car. As the driver was speaking, they could gather names of the inmates of the car from him. The family members of R-1 came to

the spot on telephonic message, and shifted all the injured persons to Apollo Hospital. Immediately after the accident, they telephoned to the police station, Moinabad and informed about the incident. To a suggestion that he was not present at the scene of offence at the relevant time, was denied by him. He also denied the suggestion that what he has mentioned in Ex.A-1 is only hearsay and he has not witnessed the accident. It was suggested to the witness that he is not competent to do the patrolling duty as he is not a permanent employee and that only permanent police constables will be allotted patrolling duty, but, the same was denied. But he admits that he has not filed any document to show that he was on patrolling duty at the time of the accident. To a suggestion that since the day of accident was Sunday, he was not on patrolling duty, was denied by him. It was further elicited from him that there were no street lights at the place of accident, but there was a small bend at the place of the accident. To a suggestion that the accident occurred due to hit and run by a four wheeler was denied by him. The suggestion that though the accident occurred due to hit and run by an unknown vehicle, he gave a false report under Ex.A-1, was denied.

15. P.W.1 was an inmate of the offending vehicle. She is none other than the wife of the deceased. In her evidence in chief, she categorically states that she has witnessed the occurrence, as she

was in the said vehicle along with her husband and that the vehicle was driven by one Mukesh Goel. According to him, when the said Car was in front of REVL factory, the driver of the car drove the vehicle in a high speed, lost control over the same, dashed to the stones and then to a tree. Due to the said impact, all of them sustained injuries and fractures. The vehicle was also damaged completely. Immediately after the accident, herself and deceased-husband were shifted to Apollo Hospital, where the deceased was kept on a Ventilator support for 8 days, who later succumbed to injuries on 24.02.2008. She spoke to the contents of the petition and through her all the documents viz., Exs.A-1 to A-25 came to be marked. She was also subjected to lengthy cross-examination by both the respondents. To a suggestion that the curve was not visible and the road appears to be straight till the driver of the car reaches the tree at the accident spot, was denied by her. She admits that accident spot cannot be called as a curve, but there was a small bend. She admits that there was no divider at the place of the accident. To a suggestion that there was no negligence on the part of the driver, was denied by her. All other suggestions relate to the employment and the income of the deceased at the time of the accident. She admits that at the time of the accident her husband was working as a Director of International Consulting Operations in India Phase-forward Incorporated Company. Her

husband was working in the said company since 2001. The office where her husband was working is located at Begumpet, Hyderabad. P.W.2, who was the employer of the deceased, was examined to speak about the earnings of the deceased, which we will discuss later.

16. But, the main plea of the Insurance Company is that it was a case of hit and run. In support of the same, the counsel mainly relied upon an endorsement made in the records of the Apollo Hospital. Their averment in the additional counter, and also the contents of the Writ Petition filed by them shows that it was a case of hit and run. He placed much reliance on the evidence of R.W.3, who was working as a R.M.O., in Apollo Hospital, Jubilee Hills and the entries made in Ex.B-4 (with regard to the nature of accident). It is to be noted here that though in the initial counter filed, there was no plea with regard to the involvement of the third vehicle in the accident, but subsequently in the additional counter, they came forward with a plea about the involvement of an unknown lorry, in the accident. It appears that R.W.4, who is one of the Panel Investigators of General Insurance company Ltd., in the R-2 company, was authorized to conduct investigation and submit a report. During his investigation, he consulted various departments including the police station and the hospital and after collecting

documents, submitted a report stating that the accident was due to hit and run by an unknown lorry. The evidence of R.W.4, with regard to involvement of third vehicle, is only based on the entries made in the case sheet at the Apollo Hospital. R.W.3 produced the case-sheet before the court pursuant to the summons issued to him and states that as per Ex.B-1, the deceased was admitted in the Hospital on 17.02.2008 at about 4.15 a.m. According to him, in Ex.B-4 it was mentioned that the accident occurred at 2.30 a.m., on 17.02.2008, while the deceased was travelling in a car and it was hit by a lorry. Admittedly, the said documents viz., Exs.B-1 to B-4 were not signed by R.W.3 nor the entries therein are they in his handwriting. In the cross-examination, it has been elicited that the Doctor, who signed in page No.22 of Ex.B-2 i.e., death certificate issued by the Hospital, was still working in the hospital, but he was not examined. The Doctor, who made the endorsements was also not examined. Advantage is sought to be taken on a suggestion given to P.W.1, to the effect that the information about the manner in which the accident took place viz., the involvement of an unknown lorry was given by her. But, it is pertinent to note that the said suggestion was denied by her. Her denial appears to be correct for the reason that the evidence of P.Ws.1 and 3 would show that immediately after the accident, P.W.1 and the deceased, who received injuries became unconscious.

17. Infact, the answer given by R.W.3, in his cross-examination, would support the version of claimants. According to them, as per the records, the relatives of the deceased came subsequently to the Hospital i.e., at the time of surgery and gave consent for the surgery. He further admits that there is no mention in Ex.B-4 as to who made such statement before Dr.Madan, a Neuro Doctor. The said entries, which are now made the basis to say that it is a case of hit and run, cannot be said to have been proved. Neither the person who produced the record in court made those entries nor the Doctor who made those entries, was examined. No-one were able to say the basis for making such entries in the record at the Apollo Hospital. The case of the Insurance Company, that it was P.W.1 who informed about the incident to the Doctor, was not proved and the suggestion given to her remained as a suggestion. On the other hand, the evidence of P.W.3 and P.W.1 would show that P.W.1 became unconscious immediately after the accident.

18. At this stage, the learned counsel for the Insurance Company would submit that not being satisfied with the manner in which the charge-sheet was filed, W.P.No.5665 of 2012 came to be filed by the Insurance Company, against the Chief Secretary, Principal Secretary (Home), Director General of Police, CID, Additional Director General of Police, CID, Deputy Commissioner of Police,

Madhapur Zone, and the claimants, seeking a direction to the police for re-investigation of the matter. In other words, to direct the 4th respondent therein, who is the Additional Director General of Police, Crime Investigation Department, Hyderabad to act upon the representation of the petitioner/insurance company dated 08.08.2011 as expeditiously as possible. A counter came to be filed in the said Writ Petition. In paragraph 4 of the counter it was stated that basing on the representation dated 08.08.2011 made to the Government, requesting to conduct further investigation into Cr.No.30 of 2008 of Moinabad Police Station, the Government issued Memo No.187/SC-B/A1/2011-1 dated 30.08.2011 giving directions to the 4th respondent therein to examine the contents of the representation and furnish factual report to the Government immediately. Pursuant thereto, the Additional Director General of Police, Hyderabad along with his Officers conducted investigation by verifying all the documents including examination of the eyewitness/informant, Naresh, PC 4109 and Santhosh Kumar Swain, Security Supervisor of REVL and submitted a report to the Government, the relevant findings are as under:

"In view of the availability of strong oral evidence that the accident occurred due to the car going and hitting the stones and tree by itself while negotiating a blind curve, there is no possibility for presumption or assumption otherwise regarding

the manner in which and cause for which the injured sustained injuries."

The said report also states as under:

"More over, it is ascertained during the course of inquiry by CID that Reliance General Insurance Company has already accepted the claim and paid an amount of Rs.5,90,745/- on 13.06.2008 to M/s. Mukesh Agencies, of which the owner is Mukesh Goel, towards the damages of the insured vehicle involved in this accident."

19. Further, the evidence of R.W.5, who was working as Additional Inspector of Police, Tappachabutra Police Station at the time of giving evidence and who was working in CID Department then, deposed that he received instructions from his superior officer to conduct an enquiry in Cr.No.30 of 2008. Basing on the enquiry conducted by him, Additional D.G.P., CID, addressed a letter to Principal Secretary, Government of Home A.P., which is marked as Ex.B-16. In the cross-examination he admits that during his investigation, he examined the Home-guard, Constable and Security-guard of REVL factory, who are the eyewitnesses to the incident and Dr.Narendranath, who is RMO of Apollo Hospital. He admits that his investigation disclosed that at the time of the accident, the respondent No.1 was driving the offending vehicle and the accident occurred due to his rash and negligent driving. It is said that as a

result of rash and negligent driving, lead to vehicle hitting against a tree and stones and then turning turtle. Consequently the inmates of car sustained injuries. His evidence does not show the involvement of a third vehicle in the accident.

20. From the report of Additional Director General of Police, which was submitted to the Government pursuant to the plea in the Writ Petition filed before the High Court and the evidence of R.W.5, it is clear that the accident occurred due to car hitting the stones and then to a tree by itself, while negotiating a curve. It also says that there is no possibility for presumptions or assumptions otherwise regarding the manner in which and cause for which the injured sustained injuries. From the said report and evidence of R.W.5, it is also clear that the accident occurred due to rash and negligent driving of the driver of the car.

21. Therefore, the evidence of R.W.4, who was examined by the respondents, coupled with the report submitted by the Additional Director General of Police, belie the theory put forward by the Insurance Company with regard to the manner in which the incident took place. A faint attempt is made to show that the vehicle could not have sustained damages to the rear bumper, if it was not hit by a lorry from the back side. But, it is to be noted that even in additional counter filed, it was not the plea of the Insurance

Company that the lorry came from behind and hit the Car from the back side. The said argument is now sought to be built up on noticing the damage to the rear bumper in the report of M.V. Inspector. It is very difficult to presume the same, more particularly having regard to the manner in which the accident occurred and the damage that was caused to the vehicle, due to the impact, after hitting the tree. Therefore, the First Information Report, charge-sheet, inquest, evidence of P.Ws.1 and 3 coupled with the evidence of R.W.4 and the report of Additional Director General of Police, amply establish that **the accident was due to rash and negligent driving of the driver of the crime vehicle.**

Manner in which the accident took place in MACMA Nos.864 of 2015 and 629 of 2015?:

22. Since the injured/claimant, who is the wife of the deceased, also received injuries while travelling in the same crime vehicle and as the issue relating to the manner in which the accident took place was discussed elaborately in the above two MACMAs, there is no necessity again to reiterate the said discussion in the present two MACMAs. Hence, the finding relating to the manner in which the accident took place in the aforementioned two appeals is applicable to the present two appeals also.

Quantum of compensation in MACMA Nos.812 of 2015 and 722 of 2015?:

23. Coming to the quantum of compensation, the trial court while taking into consideration Exs.A-15 to A-17, which are the appointment order of the deceased issued by the Director, Clinical Solutions, Phase Forward Europe Ltd., Placement order of the deceased dated 24.10.2007 and also another appointment of the deceased dated 11.06.2007, issued by the Senior Vice President, Human Resources and Administration, Phase Forward Incorporated, took the income of the deceased as Rs.2,00,000/- per month. Thereafter, deducted 40% towards income tax and then fixed the income, for the purpose of calculating the loss of dependency at Rs.1,20,000/- per month.

24. P.W.1 in her claim petition and also in the evidence deposed about the employment of the deceased. According to her, the deceased was working as a Director in International Consulting Operations, India with Phase Forward Europe Limited, U.K. In other words, according to her, the deceased was a Director, Consulting Services India, looking after the company operations and was responsible for setting up and managing the Indian Operations in India from 01.08.2007. His employer was Phase-Forward Limited, Voyager Place and Berkshire, U.K. from 09.04.2001 till his death. According to her, the deceased was drawing about 5000 pounds per month, which would be roughly Rs.4,00,000/-. It is also to be noted

here that the deceased was a highly qualified person having degrees in Business Management, Accounting, Cost Accounting, Economics, Income Tax, Statistics and Company Laws in New Delhi. The deceased was a Diploma holder in Web Development and also did project management skills. The deceased was said to be having the following skill set:-

"Packages Software and Technology, RDBMS (Oracle 8i and 9i), VB scripting, Java Scripting, OS, Window 09, Window NT, Windows 2000 and multimedia of Adobe Photoshop 5, Adobe Illustrator 7, Macromedia Director 7, Flash 3, Front page 98 and Dream Weaver, Adobe Premiere, Sound Forge 4 and Macromedia Extreme 3D etc.,"

25. Her evidence discloses the expenditure incurred for the treatment given to her and also under other conventional heads. She was subjected to cross-examination, as observed by us earlier, but however, it has been elicited that at the time of the accident her husband was working in the company referred to earlier and the location of the company was in Begumpet, Hyderabad. To prove Exs.A-15 to 17, which are appointment certificates, the employer was not examined, but the suggestion that Exs.P-15 to 19 were fabricated was denied by her. She admits that no income tax returns were filed in India. The PAN card of her husband was also

referred to in the cross-examination. She further adds that a sum of Rs.1,29,533/- per the month from January 2008 was deducted towards tax, from the salary of the deceased under Ex.A-19. To a suggestion that the deceased was not drawing 5000 pounds was denied by her. To a suggestion that he was not a permanent employee in Phase-Forward Incorporated Company was also denied by her. Though various suggestions were given to P.W.1 regarding the deductions and Form-16A showing the deduction of tax, as mentioned in Ex.A-19, she admits that certain documents are not filed. She adds that the employer had not issued Form 16A, though TDS was deducted from the salary of her husband as per Ex.A-19.

26. P.W.2, who is the Technical Services Manager of Phase Forward Europe Limited, in his evidence deposed that he is well acquainted with the facts of the case and he was authorized to depose on behalf of the employer of the deceased. He was only examined to speak about the appointment and the salary received by the deceased, which is as under:-

"Ex.A-14 is the Certificate of Incorporation in Form No.1 issued by the Assistant Registrar of Companies, Andhra Pradesh in favour of Phase Forward Software Services India Private Limited vide Certificate No.U72200AP2007FTC056450 dated 27.11.2007 permitting the company to set up its Indian Operations.

The deceased was employed by our Phase Forward Limited from April 2001. During his long employment with us, he used to provide valuable

services to our company and played diverse roles. He had consistently received favourable performance reviews for his work and was there for selection in 2007 to lead Phase Forwards International Consulting Organization in Hyderabad, India. He was a valued employee with considerable future potential. His contributions to the firm will be acutely missed. The deceased was a permanent employee with stable job and he would have got promotions and increase in his salary and his salary would have been doubled in a short period as the deceased was intelligent, sincere, dedicated and hard working and he was young and energetic and he would have continued his job for another 25 years with us.

Ex.A-15 is the Appointment order of the deceased Goutham Rai dated 09.02.2001 issued by the Director, Clinical Solutions, Phase Forward Europe Limited appointing the deceased as "Senior Application engineer" and I confirm the issuance of the said appointment order and it bears the signature of the Director, Clinical Solutions.

Ex.A-16 is the Officer letter for the deceased Goutham Rai dated 11.06.2007 confirming the details of his appointment posting in India and it bears the signature of our Director and I confirm the issuance of the said letter. In this letter, the deceased was offered the gross salary at the rate of 49,344 per annum which was payable in Indian Rupees by equal monthly instalments. The offer was accepted by the deceased with effect from 01.08.2007 to work in India as Technical Manager (Consulting Services).

Ex.A-17 is a letter issued by our Senior Vice-President, Human Resources and Administration confirming in his letter that the deceased was working as a regular full-time employee at Phase Forward Incorporated since April 9th 2001 and his earnings and annual salary also mentioned in the said letter. I confirm the issuance of the said letter.

Ex.A-18 is the bunch of pay slips and salary details of the deceased from January 2007 to December 2007 showing the salary in pounds as 4,167 pounds per month issued by our Senior Vice-President, Human Resources and Administration, Phase-Forward Incorporated. In confirm the issuance of the said pay certificates.

Ex.A-19 is the bunch of (2) salary certificates for the month of January 2008 and February 2008 issued by Phase-Forward Software Services India Private Limited showing the salary of the deceased as Rs.3,81,093/- for the month of January 2008 and the same salary also shown for the month of February 2008 issued by Senior Vice President. Human Resources and Administration, Phase-Forward Incorporated. I confirm the issuance of the said certificate.

Ex.A-20 is the Income-Tax return of the deceased filed in Form P-45 in UK equivalent to Form 16 in India, filed by the Senior Vice-President, Human Resources and Administration, Phase-Forward Incorporated on 31.01.2008 by showing total pay of the deceased in the employment at 37,506 pounds and the total tax paid in pounds is 8663 pounds. I confirm the said document.

Ex.A-21 is the identity card of the deceased which shows his designation as Director of International Consulting Services, India of Phase Forward Limited."

27. He was also cross-examined at length, but all the suggestions given to him were denied. According to him, himself and the deceased were working together in the same team and later on in Hyderabad, till his demise. In fact, the learned counsel for the Insurance Company did not dispute much with regard to the genuineness and authenticity of these documents but mainly commented on the contents of paragraph 2 of her affidavit in chief with regard the manner in which the incident took place. But as clarified by him in the cross-examination, his version in para 2 of the chief affidavit was not his personal knowledge, but he came to know about the same through third persons. Since he is not an

eyewitness to the incident; as his evidence with regard to the contents in para 2 are not relied upon to prove the incident, and having regard to the admissions made, the argument of the counsel for Insurance Company that the evidence of P.W.2 is false and introduced to help the claimants cannot be accepted.

28. Learned counsel for the Insurance Company firstly commented upon the salary certificate issued in January 2008 to show that even if the said certificate is to be believed, the claimants are not entitled for independent relocation company charges. A perusal of Ex.A-19, which was issued in the name of the deceased, show his designation as Technical Manger, and his salary at Rs.3,81,093/-. Out of which, a sum of Rs.1,29,533/- came to be deducted towards income tax and assessing the net salary at Rs.2,51,560/-. But the Court below took the income of the deceased at Rs.2,00,000/- and deducted 40% of the said amount towards the income tax. The learned counsel for the Insurance Company relied upon the judgment of the Apex Court reported in **Oriental Insurance Company Limited v. Deo Patodi and others**¹ to show that the income earned due to employment in foreign country cannot be taken at its face value, but the same requires to be reduced. It was a case where the accident took place while the

¹ (2009) 13 SCC 123

deceased was going to Bhopal along with his friends in a Tata Indica Car. Immediately thereafter, the deceased was taken to Chirayu Hospital at Bhopal and thereafter to Bhandari Hospital in Indore. He died a week after the incident due to a head injury. In the claim application, it was pleaded that while he was doing his business administration course in U.K., he was also doing a part-time job with World Bank on a monthly salary of Rs.80,000/- and was also offered an employment in the capacity of EU controller in GOA LLC, a company registered in the USA at an annual remuneration of Rs.18 lakhs. Since he intended to pursue his higher studies in M.B.A., at Central Queensland University in Australia, he did not join and when he was in India the accident took place.

29. The facts in the said case do not apply to the case on hand. As observed, it was a case where the deceased was not in employment at the time of the accident. He was working as a part time employee while he was in U.K; that he quit the said job to pursue higher studies in Australia and while in India the accident took place. Since he was unemployed the court fixed the income at Rs.25,000/- per month.

30. From the evidence available on record, more particularly through the evidence of P.Ws.1 and 2 it is clear that the deceased though initially worked in U.K., came down to India either as a

representative of the said company, for executing the plans of the said company and was posted here as a Technical Manager with its office at Begumpet, Hyderabad. It is clear from the record that he came down to India in the year 2007 and within few months, the accident took place. While working in India, he was paid salary after deducting the income tax to be paid under the Indian Law. Sri D.Prakash Reddy, learned Senior Counsel fairly submitted that the amount of Rs.23,916/- which was paid towards independent relocation company, cannot be added for the purpose of calculating the loss.

31. Though believing the version of the claimants that the deceased was working in India at the time of the accident in the company referred to earlier, the trial court disbelieved Ex.A-19-the salary certificate, on the ground that though the deceased has not worked for a complete month in February, the salary certificate showing payment of salary for the entire month was paid, which creates a doubt on the contents of the salary certificate. In our view, the said finding of the trial court is absolutely baseless. Admittedly, the company in which the deceased was working was a Multi-National company and the accident in question took place on 17.02.2008 and the injured died on 24.02.2008. Since the dispute with regard to payment of salary was only for 4 days, probably

human considerations must have weighed with the company in paying the salary for the entire month rather than taking a narrow outlook in paying the salary for the days worked in that month; more so when he was working with them since last 8 years. Therefore, we feel that the reasoning given by the trial court in fixing the salary at Rs.2,00,000/- and then deducting 40% towards Income Tax suspecting the salary certificate, cannot be accepted.

32. But the learned counsel for the Insurance Company would submit the evidence of P.W.1, P.W.2, Ex.A-17 and the claim made in the petition are not consistent with each other with regard to the salary of the deceased. The plea in the claim petition and the evidence of P.W.1 show that the deceased was earning 5000 pounds per month. The chief evidence of P.W.2 would show that Ex.A-16, contains the details of his appointment and posting in India, which also contains the signature of the Director showing that the deceased was offered a salary of 49,344 pounds per annum payable in Indian Rupees by equal monthly instalments. According to him, the said offer was accepted by the deceased with effect from 01.08.2007 to work in India as Technical Manager. His evidence also shows that the deceased was earning about 5000 pounds per month in U.K., which is equivalent to about Rs.4,00,000/- per month. A conjoint reading of the evidence of P.Ws.1 and 2 would show that

though the deceased was earning about 5000 pounds per month, which would be about 60,000 pounds per year, he agreed to come over to India and work at a salary of 49,344 pounds per annum. If the rate of the pound during that period is taken as Rs.78.20 paise or Rs.78/-, his monthly salary would be about Rs.3,20,736/- but the figure shown in Ex.A-19 was at Rs.3,81,093/-. The variation must have been due to variation in the value of the pound. A dispute now is whether the value of the pound during that period was Rs.78.20/Rs.79/Rs.80 per pound. Even accepting the plea of the learned counsel for the insurance company that the value of the pound was Rs.78.20 at that relevant point of time, and if the gross salary of the deceased as per the evidence of P.W.2 is taken as 49,344 pounds per annum, the amount which the deceased would be getting per annum would be Rs.38,58,700 per annum, thereby his monthly salary would be Rs.3,21,558/-. Out of the said amount, if 30% tax (as per the rates prevalent then) i.e., 96,467.52 ps is deducted towards income tax, the carry home salary would be Rs.2,25,083/- (3,21,550-96,467.50) and if the school fees of Rs.17,082/- (which was additionally paid) is included, it will come to around Rs.2,42,165/-. At this stage, the learned counsel for the Insurance Company would contend that if the said amount is taken into consideration, the amount, which the claimants would get by following the judgment of the Apex Court in **National Insurance Co.**

Ltd. V. Pranay Sethi and others², would be a wind fall and pleads that the multiplier to be adopted for a calculating the income may be reduced.

33. In view of the judgments of the Apex court referred to above and having regard to the findings arrived at, the income of the deceased can be fixed at Rs. 2,42,165/- after deducting income tax and independent relocation company. Since the deceased was working in the company since last seven years and the employment certificate do not indicate fixation of pay scales or promoting him in service in due course by fixing higher scales, and in view of the judgment of the Apex Court in **National Insurance Co. Ltd. V. Pranay Sethi and others³**, 40% of the income earned by the deceased shall be added to the income of the deceased towards future prospects, which would be $\text{Rs. } 2,42,165 + 96,866 = 3,39,031/-$ p.m. Thus the annual income of the deceased would be $\text{Rs. } 3,39,031 \times 12 = \text{Rs. } 40,68,372 /-$. Out of which, $1/3^{\text{rd}}$ of the said amount is to be deducted towards personal and living expenses i.e., Rs.13,56,124/-. After deducting the said amount towards personal and living expenses, the loss of dependency would be Rs.27,12,248/-. Since the deceased was aged about 34 years at the time of the accident,

² 2017 ACJ 2700

³ 2017 ACJ 2700

the appropriate multiplier as per the judgment in *Sarla Verma* would be "16". But, the Apex Court in **United India Insurance Company Limited v. Patrica Jean Mahajan and others**⁴ observed that the purpose to compensate the dependants of the victims is that they may not be suddenly deprived of source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation. But in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases amount of multiplicand becomes relevant. The intention is not to over compensate. The Apex Court further observed that ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable. Therefore, we are of the considered view that if multiplier "14" is applied, it may be just and fair. Hence,

⁴ (AIR 2002 SC 2607),

the total amount of the compensation which the claimants entitled to would be $(27,12,248 \times 14 = \text{Rs.}3,79,71,472/-)$.

34. Adding an amount of Rs.70,000/- towards the convention heads, the amount which the claimants are entitled to would be Rs.3,80,41,472/- (Rs. 3,79,71,472 + Rs.70,000/-).

Quantum of compensation in MACMA Nos.864 of 2015 and 629 of 2015?:

35. As seen from the record, though the claimant in total claimed Rs.5,00,000/- towards compensation under different heads, but, the Tribunal awarded total compensation of Rs.1,25,000/- only under the following heads:-

Pain and suffering	: Rs. 70,000/-
Transportation charges	: Rs. 15,000/-
Medical expenses	: Rs. 40,000/-

Total	: Rs.1,25,000/-
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36. The claimant claimed an amount of Rs.3,00,000/- towards compensation for continuing disability. For fixation of the amount towards compensation, the claimant has to produce the disability certificate. Here the claimant neither produced any disability certificate nor examined the Medical Officer who treated her. As

such the Tribunal rightly held that the claimant is not entitled for any compensation under the head of permanent disability.

37. The claimant also sought a claim for the pain and suffering and injuries. To prove the pain and suffering, the claimant produced medical certificates which are marked as Exs.A-5 to A-7 showing that she has received grievous injuries. Basing on the above, the trial Court rightly held that the claimant is entitled to an amount of Rs.40,000/- towards injuries and also an amount of Rs.30,000/- towards pain and suffering. Hence, the claimant in total is entitled for an amount of Rs.70,000/- towards injuries, pain and suffering. Therefore, the amount awarded by the Tribunal towards injuries, pain and suffering being reasonable warrants no interference.

38. Further, the claimant also claimed a sum of Rs.15,000/- towards transportation charges, but in proof of the same, failed to produce any document. As the claimant failed to produce any document in support of her claim towards transportation charges, the Tribunal by taking into consideration the distance between the place of incident and the hospital where she was treated, awarded Rs.15,000/-. In addition to the said amount, the Tribunal also awarded an amount of Rs.40,000/- towards medical expenses and extra nourishment. Having regard to the above, the amounts

awarded by the Tribunal are just and proper and does not require any enhancement.

39. In the result, i) M.A.C.M.A. No.812 of 2015 filed by the claimants is partly allowed enhancing the compensation from Rs.1,54,20,000/- to Rs.3,80,41,472/- while the M.A.C.M.A. No.722 of 2015 filed by the Insurance Company is dismissed. ii) M.A.C.M.A. Nos.864 of 2015 and 629 of 2015 filed by the injured/claimant and Insurance Company are dismissed by confirming the judgment of the Tribunal. The enhanced amount will carry an interest at 6% p.a. from the date of filing of O.P. till the date of realization.

40. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

Date:07.09.2018

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