

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.803 of 2008

JUDGMENT:

The appellant/claimant aggrieved by the order of dismissal dated 11.10.2007 passed in O.P.No.1657 of 2002 by the Chairman, Motor Accidents Claims Tribunal (VIII Additional District Judge) at Nizamabad, (for short, the Tribunal) preferred this appeal contending that the dismissal of the claim petition is contrary to law, weight of evidence, probabilities of the case and principles of natural justice. The Tribunal failed to decide the quantum of compensation and dismissed the O.P though appreciated the evidence of PWs1 to 3 and Exs.A1 to A10. Further contended that the Tribunal having appreciated the evidence to the effect that PW1 sustained grievous crush injury to his right leg and the same was amputated and also sustained grievous injuries on head, chest, multiple and grievous injuries on other parts of the body on 6-10-2002 in a motor vehicle accident and immediately appellant was shifted to the Nursing Home of Dr. T. Narsing Rao, M.S. Ortho, Nizamabad, where he was admitted as inpatient and underwent operation and right leg was amputated and incurred an expenditure of more than Rs.1,00,000/- towards medical and other incidental charges and needs further amount for future treatment. Appellant is unable to move from his bed and do any work, his future earnings and amenities are completely affected and suffered permanent disability.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court.

3. Respondent No.2 filed counter and contended that the driver of the tractor and trailer had no valid driving license on the date of accident and the Tribunal is perfectly right in dismissing the claim petition.

4. That, on behalf of petitioner, PWs1 to 3 were examined. Exs.A1 to A10 are marked.

5. Now, the points that arise for determination are:

(1). *“Whether the order of dismissal of claim petition is legally valid and can be sustained”?*

(2). *Whether the petitioner is entitled for compensation? If so, what amount and from which of the respondents?*

(3). *Whether the Tribunal completely went wrong though discussed the oral evidence of PWs1 to 3 and documentary evidence under Exs. A1 to A10 and also considering the exhibit A6-copy of insurance policy which was produced by the 2nd respondent and marked with consent?*

6. Learned Counsel for the petitioner contended that the Tribunal having come to conclusion that there was an accident involving tractor bearing No.AP 25D 9086 and trailer No.AP 25G 480, there is rash and negligent driving on the part of the driver and also having considered oral and documentary evidence of PWs1 to 3 and documentary evidence under Exs.A1 to A10. Even though there is rebuttal evidence, perversely dismissed the claim petition without application of mind.

7. On the other hand, the respondents contended that the evidence of PWs 2 and 3 was suspicious. Consequently, the documents under Exs. A3, A7, A8 and A10 disbelieved the order of the Tribunal is legal and valid.

8. The claimant himself is examined as PW1 whose evidence is that on 06-10-2002, he along with one Mahaboob Ali was standing near the gate on Kondarpalli-Fathellapur road, Bichkunda Mandal, Nizamabad District, at about 23.00 hours, the driver of the tractor bearing No.AP 25D 9086 and trailer No.AP 25G 480 drove the vehicle with high speed and dashed PW1 and Mahaboob Ali and later it hit a scooter coming in opposite direction. As a result, he sustained grievous injuries to his right leg, due to which his right leg was amputated. Ex.A1 is the certified copy of the FIR No.93, dated:07-10-2002 registered basing on the report of A. Srinivas. As per FIR under Ex.A1, the accident occurred at 23.00 hours on 6.10.2002, whereas the complaint was made at 9.00 a.m on 07.10.2002. The said complaint was presented by HC 152, who along with PC 175 and HG 214 who were on bandobust duty on 6.10.2002 at 11.00 p.m. After patrolling duty on 07-10-2002 at 7.00 am when they were returning to the police station on the way at Fathellapur high way observed scooter bearing No.AP 25 B.624 found there. They also found Pathi Vittal - 32 years and Chinthal Hanmandlu-31 years and on information they came to know that some unknown vehicle driver came in rash and negligent manner and dashed the scooter.

Under Ex.A2-charge sheet, the investigating officer after thorough investigation filed charge sheet on the accused-Ch. Narayan Reddy-Driver of tractor bearing No.AP 25 D.9086. In the charge sheet, there is specific allegation that on 6.10.2002 at 1.00 pm, Mahaboob Ali and Kondapally Buchappa-PW1 were waiting at Fathellapur gate to go to Nizamabad. At that time, the accused drove the tractor bearing No.AP 25 D.9086 in a rash and negligent manner and dashed against

PW1 and Mahaboob Ali and caused grievous injuries and later dashed the scooter bearing No.AP. 25 B.624, due to which P. Vittal and C. Hanmandlu also sustained injuries. The charge sheet further disclose that on 26.10.2002 at 10.00 am, the accused-Ch.Narayan Reddy was arrested at Police Station, Bichkunda on his surrender, issued arrest memo and released him on bail. Finally the Investigating Officer established the guilt of the accused beyond all reasonable doubt.

9. The facts and circumstances discussed above, the evidence of PW1 and supported with Exs.A1 and A2 well established that the accident occurred due to rash and negligent driving of the driver of the tractor and trailer .

10. Respondent No.2 having filed counter denied all the allegations and as the occurrence of the accident and disputed the claim of the petitioner for compensation and contended that the driver of the tractor and trailer had no valid driving license.

11. Respondent No.1 is the owner of the tractor and trailer having received notice, remained exparte and even did not file any counter. The driver of the tractor and trailer is the accused in the criminal case is the appropriate person to speak about whether the driver involved in the accident or who is at fault. But respondent No.2 did not produce the driver of tractor and trailer and adduce any oral and documentary evidence. More so, absolutely there is no iota of evidence or it is the plea of the 2nd respondent that it has issued any notice to the 1st respondent directing to produce the driving license of the driver and particulars of the tractor and trailer, copy of the policy, copy of the permit of the tractor and trailer. It did not comply the

mandatory obligation by issuing any such notice. In the absence of any such rebuttal evidence produced by the 2nd respondent, the Tribunal is right in considering the evidence of PW1 and documentary evidence under Exs.A1 and A2 and came to conclusion that evidence of PW1 coupled with Exs. A1 and A2 would amply prove that the driver of the tractor had caused the accident by driving it in rash and negligent manner.

12. The evidence of PW1 is that in the instant case, he sustained grievous crush injury to his right leg due to which his right leg was amputated. He also sustained grievous injuries on head, chest, hands, multiple and grievous injuries on the other parts of the body. Immediately, he was shifted to the Nursing Home of Dr. T. Narsing Rao, M.S. Ortho, Nizamabad, where he was admitted as inpatient and right leg was amputated and incurred more than an amount of Rs.1,00,000/- towards medical expenses and he is still under going treatment from private doctors. The said doctor is examined as PW2. He completely corroborated evidence of PW1 and confronted with Ex.A3-wound certificate, exhibit A7-discharge summary and Ex.A8-final bill. His corroboratory evidence is that on 07.10.2002, he examined PW1 in his private clinic and found Traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee. PW1 was admitted in his hospital with wound debridement and closure of the wound and discharged him on 20-10-2002 by issuing Exs. A3-wound certificate, A7-discharge summary and A8-final bill.

13. A perusal of Ex.A3-wound certificate issued by PW2 goes to suggest that Traumatic amputation of the right leg with comminuted

fracture of both the bones of the right leg and dislocation of knee and he also noticed fracture of left side of lower chest. Exhibit A7 is the discharge summary issued by Dr. T. Narsing Rao, Tirumala Hospital, which supports the evidence of PW2. That as per Ex.A7-discharge summary, PW1 was admitted in the hospital on 07.10.2002 and discharged on 20-10-2002. Finally, PW2 issued exhibit A8-final bill for an amount of Rs.25,556= 00.

14. The cross examination of PW2 is that he do not know whether patient had taken first-aid before coming to his private hospital. PW1 in his evidence stated that immediately he was shifted to Nursing Home of Dr. T. Narsing Rao, who is PW2. So, the question of first-aid before admitting in the hospital does not arise and this question and answer has no relevance. P.W.2 further stated that x-rays were taken and he maintained case sheet for him. He further stated that on 7-10-2002 he performed surgical operation for him and conducted some other tests after the surgery and the reports in respect thereof are available in Hospital. But he did not bring the case sheet and x-ray reports. He himself admits hat he did not mention the date of surgical operation in Ex.A3. In Ex.A7-discharge summary, it is mentioned that PW1 admitted in hospital on 07.10.2002 for traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee and also mentioned under heading-Both knee-wound debridement and closure done-wound healed well with primary antenter and that the doctor explained that he conducted surgery on 07-10-2002 and therefore, does not fair to contend that the doctor has not noted surgery conducted on 7.10.2002 in the Ex.A7 which is clearly disclosed.

Ex.A8 is the final bill. Under Ex.A8, it is clearly noted that traumatic amputation of right leg lower limbs - both knee. In the final bill, it was charged with room charges, professional charges, nursing charges, theatre charges, anaesthesia/surgeon visit, diagnostic charges, Ecg charges, X-ray, dressing/other charges, registration charges and pharmacy charges. Mere mentioning of room charges, nursing charges, theatre charges, anaesthesia/surgeon visit, theatre charges, diagnostic charges itself shows that PW1 undergone surgery. During the cross examination, PW2 stated that pre-operative x-rays are taken in case of this nature. The operation was conducted under the supervision of Anaesthetician, whose name is mentioned in the case sheet and he issued Ex.A3 in private capacity. PW2 also admits that Ex.A8 is the bill amount is not shown in the income tax returns. When PW1 sustained traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee as is clear from the disability certificate, there is nothing to doubt about injury, amputation under Ex.A8-final bill issued by PW2.

15. The further evidence of PW1 is that due to amputation of the right leg, he is unable to walk and do any work and also attends to his regular works, he became dependant on others, sustained permanent disability. Prior to the accident, he was hale and healthy and working as Plumber and Electrician and used to earn Rs.10,000/- per month from plumbing work and also Rs.10,000/- from electrician work and in all, he used to earn an amount of Rs.20,000/- per month and contributed the same to his family.

16. To establish the disability, the claimant filed Ex.A9-disability certificate issued under authority vide G.O.Ms.No.109, Women's Development, Child Welfare and Labour Department, dated:15-6-1992. For all the purpose of assistance, the Orthopaedically Handicapped are those who have physical defect of deformity with cause an Interference with the normal functioning of bones, muscles and joints. The said certificate was issued by the District Medical Board, Nizamabad on 09.09.2003 certifying that the disability is 60% partial and permanent. Amputation of the right leg was below knee according to old wound. The medical board certified that according to the old wound certificate ie., Ex. A3 – patient (PW1) had traumatic-both knee amputation of right leg with comminuted fracture of both the bones of the right leg with knee dislocation. On verification physically, patient has A/K amputation stump and the patient has the following disability:

- (1). Unable to stand without crutches.
- (2). Unable to sit.
- (3). Loss of earning since cannot do hard work.

17. Further, Ex.A10 is the disability certificate which is supported by the evidence of PW3 whose evidence is that on 16-3-2007, he examined PW1, aged about 48 years, issued the disability certificate certifying that the disability is 75%. There was amputation over the knee of right leg. He is also the Chairman of the District Medical Board and issued the said certificate. His evidence is that, during the cross examination, he took the assistance of Dr. Ajay Kumar in examining and issued Ex.A10. The said Dr. Ajay Kumar visits District Head quarters hospital on every Friday on deputation basis since there is no Orthopaedician in the said hospital. He admits that Ex.A10 is issued for getting benefits/concession from the Government which are

available to the physically handicapped persons. It is true in Ex.A10, it is endorsed that it is not valid for legal purpose. He further stated that it is not true to suggest that he did not examine the person mentioned in Ex.A10. It is also stated by him that it is not true to suggest that without any verification he issued Ex.A10 certificate falsely and that he deposing falsely. Ex.A.10 was signed by Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad. It was issued as per G.O.Ms.No.109, Women's Development, Child Welfare and Labour Department, dated:15-6-1992 on 16-3-2007. The disability is mentioned as 75%.

18. The Tribunal having considering the oral and documentary evidence of PW1 and the medical evidence of doctors – PWs2 and 3 and having discussed that PW1 took treatment in the Nursing Home run by Dr. T.Narsing Rao – PW2, observed that he received treatment as inpatient and his right leg was amputated and had spent more than Rs.1,00,000/- towards medical treatment. The further evidence of PW2 is that on 7.10.2002, he examined PW1 and was found, traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee. PW1 was admitted in his hospital. Wound debridement and closure of the wound done. PW1 was discharged on 20-10-2002 and accordingly issued Exs.A3-wound certificate, A7-discharge summary and A8-final bill. Simply because during the cross examination PW2 stated that he took x-rays and maintained case sheet and further stated that on 7.10.2002 he performed surgical operation and conducted some other tests after surgery and the reports in respect thereof are available with his hospital, but the same he did not mention in the case sheet and also the date of operation. The wound certificate does not show about the

identity of person that brought PW1 and admitted in hospital. With regard to treatment is concerned, it is between the doctor and the patient and not the person who brought the patient and admitted into hospital. Under such circumstances, merely because PW2 did not mention the date of operation either in Ex.A3 – wound certificate or in Ex.A7-discharge summary and also not mentioned who brought the PW1 is nothing but only to create doubt and confusion. But on 7.10.2002, PW2 conducted surgery on PW1.

19. The further finding of the Tribunal is that neither the evidence of PW2 nor Ex.A3 would certificate discloses about the identity of the person that admitted PW1 into hospital. Any Orthopaedic surgeon before giving medical treatment to an inpatient would open a case sheet and maintain in throughout the period of medical treatment. Further, x-ray is taken when fracture of bone is there. Added to that, investigations would be made before conducting any surgical operation. PW2 evasively stated that the investigation reports are available in hospital. The fact that the case sheet, x-ray reports and other investigation reports are not produced before the Court even though he (PW2) was asked about them in cross examination would inferentially shows that in fact no case sheet was opened and maintained and x-rays were not taken. The statement of PW2 that he performed surgical operation on 7-10-2002 cannot be believed for the case sheet wherein the details as to the operation performed are mentioned, is not produced before the Court. So, except the oral statement of PW2 that he found such fracture injury and that he conducted surgical operation for him, there is no documentary evidence in support of his version. Thus, the evidence of PW2 does not inspire confidence to accept it. Such evidence are perverse.

20. Motor Vehicles Act, 1988 is the only beneficiary to help the dependents and destitutes who lost their husbands, children and earning members of the family. When PW2 clearly stated that he has opened the case sheet, x-rays and investigations are done and they are in the hospital, if really required, it is the 2nd respondent who can take steps to produce them in the Court. Even in the absence of any rebuttal evidence produced by the 2nd respondent, simply the Tribunal proceed in negative approach and caused loss to PW1 who actually suffered particularly having found that PW1 met with an accident involving tractor bearing No.AP 25D 9086 and trailer No.AP 25G 480 on 6.10.2002 at 23.00 hours. Certainly PW1 sustained injuries and he appeared before the Court and also examined himself and produced Exs.A1 to A10. Disability certificate (Ex.A9) from which it is clear that that there is amputation of right leg with comminuted fracture both bones right leg with knee dislocation with 60% of partial permanent disability and Ex.A10 shows above knee amputation-right with 75% disability. It is also clear evidence of PW1 that he is unable to walk, sit and stand completely and he cannot out any work. Dr. A. Ajay Kumar, Orthophaedic Surgeon by entering into witness box and deposed that he got issued this Ex.A10 certificate. But the Tribunal for the reasons best known to it, disbelieved the evidence of PW2 and 3 and also disbelieved Exs.A9 and A10.

21. The finding of the Tribunal that the evidence of PWs 2 and 3 and Exs.A9 and A10 cannot be accepted, particularly, when the disability is apparent to the naked eyes that PW1 appeared before the Court to give evidence. Therefore, under the facts and circumstances discussed above, I am of the considered view that the finding of the

Tribunal that the evidence of PWs2 and 3 and the evidence of the documents under Exs.A3, A7, A8 and A10 cannot be accepted and further when the evidence of PW3 that he examined PW1 and issued Ex.A10 disability certificate cannot be accepted are perverse, without any reasons or rebuttal evidence produced by the respondents. Ultimately, I find that PW1 in the accident sustained traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee. He was inpatient in the hospital from 07-10-2002 to 20-10-2002. He had incurred more than Rs.1,00,000/-. Again he was admitted under PW2 from 7.10.2002 to 20.10.2002 for about 13 days as per Ex.A7. Ex.A9-the disability is 60% and he is unable to sit, stand and there is loss of earning since he cannot do hard work and as per Ex.A10-disability certificate issued by PW3, there is 75% disability. Ex.A9 shows 60% disability and Ex.A10 shows 75% disability. Therefore, I am of the considered view that the disability will be considered at 60% because the amputation is below the knee though in Ex.A10 mentioned as 75%. Ex.A9 clearly certified that they have observed at the time of examination for issuing the disability certificate on 09.09.2003, at the earliest point. That the patient had traumatic amputation of the right leg with comminuted fracture of both the bones of the right leg and dislocation of knee and the patient has disability of 60% partial and permanent disability.

22. Admittedly, petitioner did not file any document in proof of his age. In Ex.A1, it is the evidence of PW1 that he was 34 years by the date of accident. PW2 in the evidence also examined PW1 in the year 2002 who also mentioned petitioner's age as 34 years. In the year 2007, PW3 examined and stated that petitioner was 48 years. In Ex.A1, his age is mentioned as 34 years, in Ex.A3-34 years, in

Ex.A7-34 years in Ex.A9 (dated:9-9-2003)-35 years and in Ex.A10 (dated:16-3-2007)-48 years. Having considering the above documentary evidence of PW1, since the accident occurred on 6.10.2002 at 11.00p.m., I consider the age of PW1 at the time of accident as 34 years and the disability is 60%.

23. Further, with regard to the income, the evidence of PW1 is that as a Plumber, he used to earn Rs.10,000/- per month and as Electrician, he used to earn Rs.10,000/- per month, in total Rs.20,000/- per month. Except oral evidence, he has not produced any document showing that he is a qualified Plumber/Electrician or working in Company and also showing any piece of paper that he is earning an amount of Rs.20,000/- per month.

24. Further, Ex.A6/B1 is the policy on the vehicle tractor bearing No.AP 25D 9086 and trailer No.AP 25G 480. The policy was in force with effect from 14.2.2002 to midnight of 06-10-2002. Under Ex.A6/B1, the insured is the respondent No.1 and the insurer is the respondent No.2-New India Assurance Company Limited. Ex.A5 is form-23 issued by the Transport Department and Ex.A4 is the form of certificate of registration No.AP-25 for the tractor and trailer. Accordingly Exs.A4 and A5 are the registration certificates of owners. By virtue of Ex.A.6/ Ex.B.1- Insurance Policy which is in force by the date of accident, the 1st respondent is the owner by virtue of Ex.A6. The 2nd respondent has to indemnify the liability of the 1st respondent and accordingly the respondents 1 and 2 jointly and severally liable to pay the compensation.

25. Thus, it is clear from the Tribunal's decision that no material was placed before the Tribunal to prove as to what was the income of the PW1 at the time of accident. He also did not produce any certificate in proof that he is a qualified Plumber/Electrician. While assessing income, attendant circumstances have to be considered. In the light of what has been discussed about just compensation, the income cannot be estimated without any material. To justify the estimation, the Honourable Supreme Court, in the case of State of Haryana and another V. Jasbir Kaur and Others¹ held as under:

"The claim was resisted by the appellant-Haryana Roadways by taking the stand that there was no rash and negligence on the part of the driver of the vehicle and in any event there was contributory negligence on the part of the deceased. The claim was also resisted on the ground that amount claimed was highly exaggerated, without any rational basis and there was no material to show as to what was the deceased's income and the deprivation of financial contribution by the deceased to his family. Another claim petition was filed by one Ajaib Singh who stated to have been injured in the accident in question. We are not presently concerned with his case. Motor Accident Claims Tribunal, Fatehabad (in short 'Tribunal') by order dated 27.3.2001 held that the claimants were entitled to compensation of Rs.6.5 lakhs for loss of pecuniary benefits. It was further stipulated that the claimants would be entitled to the interest @ 9% on the amount of compensation from the date of application till realization. For determining the compensation the Tribunal held that the monthly income of the deceased can be reasonably assessed at Rs.4500 per month. After deducting Rs.1500/- for personal expenses, the Tribunal took Rs.3000/- per month to be the contribution and multiplier of 18 was applied as per second schedule to the Act. The appeal before the High Court filed by the present appellants was dismissed on the ground that there was no infirmity in the award.

Gauzing the relevant aspects, noted above, the monthly income is fixed at Rs.3000/- per month, and after deducting Rs.1,000/- for personal expenses, financial contribution so far as the claimants are concerned is fixed at Rs.2,000/- per month."

26. As a result of the above judgement of the Supreme Court, the monthly income of PW1 is fixed at Rs.3000/- per month. After

¹ (2003) 7 SUPREME COURT CASES 484

deducting 1/3rd towards his personal expenses having contributed and by applying the decision of the Apex Court in *Sarala Varma vs. Delhi Transport Corporation*², the appropriate multiplier applicable for the age of 31 to 35 is '16'. After deducting 1/3rd towards his personal expenses, comes to Rs.24,000/-x16=3,84,000/-. Besides this, the petitioner is also entitled to Rs.25,556/- towards medical expenses and treatment as per Ex.A8. Besides this, the petitioner sustained 60% disability, he is entitled to 60% of Rs.3,84,000/-, which comes to Rs.2,30,400/-. In addition to this, Rs.6000/- towards transportation, plus Rs.10,000/- for extra nourishment, Rs.15,000/- for pain and suffering. Accordingly, the petitioner is entitled to total compensation of Rs.6,70,956=00.

27. In the facts and circumstances discussed above, the Tribunal erred in giving finding that the accident occurred due to rash and negligent driving of the driver of the tractor bearing No.AP 25D 9086 and trailer No.AP 25G 480 on 06-10-2002 and erroneously disbelieved the evidence of PWs.2 and 3 and that the PW1 sustained injuries and documentary evidence of Exs.A3 to A10 and such a finding is illegal, perverse and warranting interference. Accordingly the appeal is allowed by setting aside the dismissal order, dated:11.10.2007 in O.P.No.1657 of 2002, passed by the Chairman, the Motor Accidents Claims Tribunal (VIII Additional District Judge) at Nizamabad. Consequently, the respondents are directed to deposit the total compensation of Rs.6,70,956/- together with interest @ 7.5% per annum from the date of petition i.e. 19.11.2002 till the date of payment or deposit by the respondents 1 and 2, after deducting the

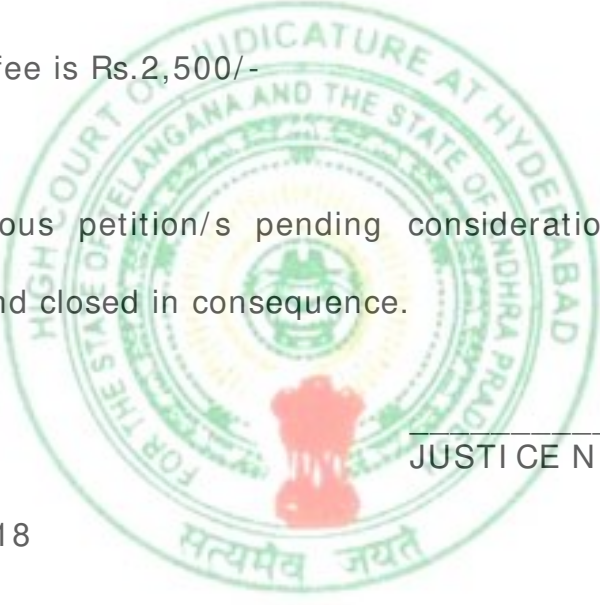
² (2009 ACJ 1298)

amount, if any, already paid, within a period of 30 days from the date of receipt of a copy of this judgment.

28. On such deposit, the appellant/petitioner is permitted to withdraw 50% of the amount and the balance remaining amount is kept in any Nationalized Bank for a period of three years. However, the petitioner is at liberty to move the Tribunal according to his need by filing the application seeking permission to withdraw the amount required and on such application, the Tribunal can consider his application.

29. Advocate fee is Rs.2,500/-

30. Miscellaneous petition/s pending consideration, if any in the appeal shall stand closed in consequence.



JUSTICE N.BALAYOGI

Dated: -01-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A No.803 of 2008

DATED: -1-2018

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