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APHC010681122012



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3520]

FRIDAY, THE THIRTEENTH DAY OF MARCH
 TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3084/2012

Between:

1. VICE CHAIRMAN-MANAGING DIRECTOR, A.P., & ANOTHER, ROAD TRANSPORT CORPORATION, MUSHEERABAD, ONGOLE.
2. REGIONAL MANAGER, ANDHRA PRADESH STATE ROAD TRANSPORT, CORPORATION, ONGOLE.

...APPELLANT(S)

AND

1. MAMIDI PADMAVATHI 3 OTHERS, W/O. SATYANARAYAN, R/O. 2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, (VILL & M), PAMUR, DIST. PRAKASHAM.
2. MAMIDI MANIKANTA, W/O. SATYANARAYAN, R/O. 2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, (VILL & M), PAMUR, DIST. PRAKASHAM. MINORS REP. BY IST RESPONDENT.
3. MAMIDI MANISHA, D/O. SATYANARAYAN, R/O. 2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, (VILL & M), PAMUR, DIST. PRAKASHAM. MINORS REP. BY IST RESPONDENT.

4.MAMIDI VENKATA LAKSHMAMMA, W/O. VENKAT SUBBAIAH, R/O. 2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, (VILL & M), PAMUR, DIST. PRAKASHAM.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased toto set aside the order & Decree passed in MVOP No. 491 of 2009 dt. 19-6-2012 on the file of Motor Accidents Claims Tribunal-I Addl. Dist. Judge, Ongole and pass

IA NO: 1 OF 2012(MACMAMP 6657 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the orders & Decree,dt. 19-6-2012 passed in MVOP No. 491 of 2009 by Motor Accidents Claims Tribunal-I Addl. Dist. Judge, Ongole, Pending disposal of Court and pass

IA NO: 2 OF 2012(MACMAMP 8245 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim stay granted in MACMA.MP.No. 6657 of 2012 in MACMA.No. 3084 of 2012 dt. 17/10/2012 by permitting the petitioners to withdraw the amount deposited to the credit of MVOP.No. 491 of 2009 on the file of hte Chairman MACT-cum-1st Additional District Judge., Ongole pending the above MACMA

IA NO: 1 OF 2013(MACMAMP 35324 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant(S):

1.ARAVALA RAMA RAO(SC FOR APSRTC KKAC)

Counsel for the Respondent(S):

1.MADHAVA RAO NALLURI

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 943/2014

Between:

- 1.MAMIDI PADMAVATHI & 3 ORS, W/O.SATYANARAYAN R/O.2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, PAMUR [V] & [M], PRAKASHAM DISTRICT.
- 2.MAMIDI MANIKANTA, S/O.SATYANARAYAN R/O.2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, PAMUR [V] & [M], PRAKASHAM DISTRICT.
- 3.MAMIDI MANISHA, D/O.SATYANARAYAN R/O.2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, PAMUR [V] & [M], PRAKASHAM DISTRICT. [BOTH ARE MINORS REP BY ITS GUARDIAN M.PADMAVATHI P1]
- 4.MAMIDI VENKATA LAKSHMAMMA, W/O.VENKATA SUBBAIAH R/O.2-59-9, NEAR VIJAYA LAKSHMI CHITRALAYA, PAMUR [V] & [M], PRAKASHAM DISTRICT.

...APPELLANT(S)

AND

- 1.THE AP STATE ROAD TRANSPORT CORPORATION ANR, AP STATE ROAD TRANSPORT CORPORATION O/O.MUSHEERABAD,ONGOLE.
- 2.THE REGIONAL MANAGER, AP STATE ROAD TRANSPORT CORPORATION O/O.RTC BUS STAND COMPLEX, ONGOLE. PRAKASAM DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to

IA NO: 1 OF 2012(MACMAMP 8382 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased condone the delay of 75 days in filing the appeal against decree and judgement

passed in MVOP No.491/2009 dated 19.06.2012 on the file of Motor Accidents Claims tribunal [Before the Ist Addl.District Judge], Ongole

Counsel for the Appellant(S):

1.MADHAVA RAO NALLURI

Counsel for the Respondent(S):

1.K. SARALA REDDY(SC FOR APSRTC PNV)

2.ARAVALA RAMA RAO(SC FOR APSRTC KKAC)

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.3084 of 2012 and 943 of 2014

COMMON JUDGMENT:

Introductory:

1. Both M.A.C.M.A.Nos.3084 of 2012 and 943 of 2014 are directed against the award and decree dated 19.06.2012 passed in M.V.O.P.No.491 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-FAC/I Additional District Judge, Ongole (for short “the learned MACT”).
2. The respondents before the learned MACT, representing the A.P.S.R.T.C. filed M.A.C.M.A.No.3084 of 2012 challenging the award, whereas the claimants before the learned MACT filed M.A.C.M.A.No.943 of 2014 seeking enhancement of compensation.
3. For the sake of convenience, the parties are hereinafter referred to as the claimants and the respondents with reference to their status before the learned MACT.

Case of the claimants:

- 4(i). One Mamidi Satyanarayana (hereinafter referred to as “the deceased”) is the husband of claimant No.1, father of claimant Nos.2 and 3 and son of claimant No.4. On 12.07.2009, the deceased and his family members went to Tirumala. After darshan, on 13.07.2009 evening, while they were on their return from

Tirupathi and reached Nellore-Atmakur Bus Stand, Nellore and waiting for a bus to go to their village.

(ii). A bus bearing No.AP 10 Z 9078 (hereinafter referred to as “the offending vehicle”), which was going to Pamur, came there and stopped. With a view to reserve a seat, the deceased was trying to put a kerchief on the seat through the window. At that time, the driver of the offending vehicle, without observing the people, started the bus. As a result of the same, the deceased fell down and the rear tyre of the bus ran over his head. The deceased sustained grievous injuries and subsequently succumbed to the injuries.

(iii). A case in Crime No.40 of 2009 of Nellore Traffic Police Station was registered against the driver of the offending vehicle. Subsequently, the driver of the offending vehicle was charge-sheeted *vide* C.C.No.499 of 2009 on the file of Judicial First Class Magistrate Court, Nellore.

(iv). The deceased was hale and healthy, aged 47 years and was earning his livelihood through his business in wholesale provisions. He was maintaining a shop at Pamur and was earning more than Rs.50,000/- net income per annum and contributing the same for the maintenance of the family. Due to the death of the deceased, the claimants lost all support of the deceased. Hence, they are entitled for just and reasonable compensation.

5. Respondent No.2 before the learned MACT remained *ex parte*.

Case of respondents:

6(i). The petitioners shall prove the pleaded accident, negligence of the driver of the RTC bus / offending vehicle, death of the deceased due to the accident, age, occupation, income of the deceased and the dependency of the claimants.

(ii). Further, the respondents / A.P.S.R.T.C contended that the negligence of the deceased is the cause for the accident. Therefore, the claimants are not entitled for compensation.

7. On the strength of pleadings, the following issues were settled for trial by the learned MACT:

(i). Whether the accident occurred due to rash and negligent driving of the driver of bus bearing No.AP 10 Z 9078, on 13.07.2009 at Atmakur Bus Stand in Nellore town at about 07:45 P.M.?

(ii). Whether the petitioners are entitled for compensation? If so to what amount and from whom?

(iii). Whether the age and income of the deceased are correct?

(iv). To what relief?

Evidence before the learned MACT:

8(i). The claimant No.1 / the wife of the deceased, was examined as P.W.1 and one Gonta Krishna Murthy, another witness, was examined as P.W.2.

(ii). On behalf of the claimants, Exs.A1 to A13 were marked.

(iii). On behalf of the respondents, one Shaik Shukkur, the driver of the offending vehicle was examined as R.W.1.

Findings of the learned MACT:

9(i). After considering the oral and documentary evidence placed on record, the learned MACT came to the conclusion that the petition is filed under Section 163-A and that involvement of the vehicle is enough. In addition, a case in Crime No.40 of 2009 was registered at Nellore Traffic Police Station and a charge sheet was also filed against the driver of the offending vehicle *vide* C.C.No.429 of 2009.

(ii). Therefore, the version of the claimants was to be believed and consequently the learned MACT held the respondents, who are the owners and in whose control the offending vehicle was at the time of accident, are jointly and severally liable to pay the compensation.

(iii). The learned MACT, while assessing the compensation, assessed the monthly income of the deceased at Rs.3,500/- and by adopting the multiplier '13', awarded Rs.3,64,000/- towards the loss of dependency and Rs.4,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Under the head of loss of consortium, claimant No.1/ wife of the deceased was awarded Rs.7,000/-. In total, the compensation awarded to the claimants is at Rs.3,85,000/-.

Arguments in the appeal:

For the claimants:

10(i). The learned MACT failed to properly appreciate the evidence regarding the earning capacity of the deceased and erroneously fixed the income of the deceased at only Rs.3,500/- per month.

(ii). The learned MACT failed to award reasonable compensation under various heads and therefore the compensation awarded requires enhancement.

For the respondents(A.P.S.R.T.C.):

11(i). The learned MACT failed to properly appreciate the evidence on record.

(ii). The learned MACT ought to have considered the contributory negligence on the part of the deceased and the evidence of R.W.1-the driver of the offending vehicle was not properly appreciated.

(iii). The learned MACT wrongly fixed the monthly income of the deceased at Rs.3,500/- per month without proper evidence and also applied multiplier '13' instead of '11', as the deceased was aged above 50 years.

(iv). The compensation awarded under various heads is excessive and the rate of interest granted is also on the higher side.

12. Heard both sides extensively. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

13. The points that arise for consideration in these appeals are:

- 1) Whether the findings of the learned MACT on the point of negligence of the driver of the offending vehicle and not taking note of contributory negligence of the deceased are proper and whether the compensation awarded at Rs.3,85,000/- under the impugned award is just and reasonable or requires any interference, if so on what ground and to what extent?
- 2) What is the result of appeal in M.A.C.M.A.No.3084 of 2012?
- 3) What is the result of appeal in M.A.C.M.A.No.943 of 2014?

Point No.1:

(i) Accident and negligence:

Statutory Guidance:

14(i). As per Section 176 of the Motor Vehicles Act, the State Governments are entitled to make rules for the purpose of carrying effect to the provisions of the Motor Vehicles Act.

(ii). In relation to claims before the learned MACT, Rule 455 to Rule 476 of the A.P. Motor Vehicles Rules, 1989, vide Chapter No.11, provides comprehensive guidance. As per Rule 476 of the A.P. Motor Vehicles Rules, 1989, the Claims Tribunal shall proceed to award the claim based on the registration certificate of the vehicle, insurance policy, copy of FIR and Post-mortem certificate etc.

Precedential Guidance:

15. The Hon'ble Apex Court in ***Bimla Devi and others vs. Himachal Road Transport Corporation***¹, in para 15 observed as follows:

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

Legal context of the matter:

16. Although the application is filed under section 163-A, the respondents/ APSRTC has disputed the negligence on the part of the driver of the offending vehicle and even adduced the evidence by examining the driver as R.W.1.

17. From the pleadings of the respondents and also the issues framed by the learned MACT, particularly referring to the Section under which the application is filed under Section 166 of the Motor Vehicles Act, it can be understood that there was participation by both sides with an impression that negligence is a disputed fact.

¹ 2009 (13) SCC 530

18. It is also evident from the judgment that the learned MACT addressed the pleadings and evidence placed by the parties and discussed the aspect of negligence and answered the same.

Negligence-Contributory Negligence-Composite Negligence:

19(i). If there is absence of duty of care and the rashness or negligence on the part of tortfeasor and the victim has no role of mishap, it is a clear case of negligence on the part of the tortfeasor. Then the tortfeasor and his master are completely liable.

(ii). If the victim has some role in the process in the occurrence of the accident/ incident and there is failure to take proper care and the tortfeasor, then it is a case of contributory negligence and the liability can be apportioned among the tortfeasor and victim.

(iii). If there is more than one tortfeasor and the victim has no role in the occurrence of the accident and there is neither a duty of care nor a failure on the part of the victim, then it is a case of composite negligence and all the tortfeasors are liable to make good the loss or compensate the victim jointly and severally liable.

20. In examining whether a case is falling under category of negligence, contributory negligence or composite negligence, one has to keep in view the following aspects:

(i) On whom duty of care lies.

(ii) Breach of duty

(iii) Whether there was any duty to take care on the part of the victim and breach, if any thereof.

(iv) Evidence indicating who had the better and last opportunity to prevent the mishap.

21. The Hon'ble Supreme Court in a case between ***Pavan Kumar and Another vs. Harkishan Dass Mohan Lal and others***², after referring to ***T.O. Anthony vs. Karvarnan and others***³ and ***Andhra Pradesh State Road Transport Corporation and Another vs. K. Hemlatha and others***⁴ addressed as to distinction between the principles of composite and contributory negligence vide para Nos.7, 8 and 9 as follows:

7. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edn. 1998). It would be appropriate to notice the following passage from the said work:

“Where two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff

² (2014) 3 SCC 590

³ (2008) 3 SCC 748

⁴ (2008) 6 SCC 767

is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous....”

8. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in *T.O. Anthony* [*T.O. Anthony v. Karvarnan*, (2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] followed in *K. Hemlatha* [*A.P. SRTC v. K. Hemlatha*, (2008) 6 SCC 767 : (2008) 3 SCC (Cri) 34].

9. Paras 6 and 7 of *T.O. Anthony* [*T.O. Anthony v. Karvarnan*, (2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] which are relevant may be extracted herein below : (SCC p. 751)

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of ‘composite negligence’ will not apply nor can there be an automatic inference that the negligence was 50 : 50 as has been assumed in this case. The Tribunal ought to have examined the extent of

contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

Social context-duty of care on the part of the bus operators:

22(i). The driver will normally move the bus for travel after passengers board the bus. The necessity to reserve a seat through the window arises before the passengers board the bus and immediately after the existing passenger vacates the seat. It is common experience and it can be seen in many bus stations, particularly in towns and villages that people try to occupy seats immediately after entering the bus and in that process there will be rush to enter the bus, as the first entrant into the bus will occupy the better seat.

(ii). It is also common experience in ordinary social scenarios that people reserve seats through windows by putting kerchiefs, towels or bags. Sometimes the bags etc. may even be subjected to theft and there will be quarrels in that regard. This is a social aspect of lower-middle and middle-class life, particularly when the scenario of the year 2009 is taken into consideration.

23(i). Proper care from the bus stand administration and the operator of the bus, such as providing proper bus shelters and entry points and preventing access to the bus until it finally stops, are also necessary. The duty of care on the part of the operator of the bus engaged in trade extends to taking all proper care.

(ii). Self-discipline and restraint on the part of the passengers are also necessary. From the angle of the passengers or public, it is a matter of care and precaution, but, when it comes for the operator it becomes a legal duty and obligation. Culpability for the crime and the forcibility of incident are different. The criminal liability in this type of case, where the victim falls under the rear tyre, may have some scope for arguments of benefit of doubt. But in cases of torts and the tortious liability of a tortfeasor and his employer / master, probability theory is sufficient.

24. This is not a case of hypothesis. It is a simple case of foreseeability and the ability to visualize certain things which a person engaged in trade can easily imagine. Therefore, in the context of the case, substantial duty lies on the part of the institution rather than the victim.

Analysis of Evidence:

25(i). Coming to the evidence, P.W.1 is an eye witness to the accident. She has stated that her husband was trying to reserve the seats and that the driver of the bus moved it without observing the people.

(ii). During cross examination, she has stated that they were waiting at Atmakur Bus Stand for catching the bus and that there was heavy rush. It was specifically suggested to P.W.1 that her husband tried to put a bag through the window of the bus and slipped and fell down. It is also suggested to her that her husband tried to put the kerchief from the side of the driver and that the

deceased, negligently catching hold of the rod of the window, tried to put a bag on the seat and fell down and that there was no negligence on the part of the driver of the bus.

26. R.W.1, the driver of the offending vehicle, stated that while he was proceeding into the PSR Bus Stand through the inside gate, before placing the bus at the point, he heard cries from bystanders asking him to stop the bus. Then he stopped the bus, got down and noticed that the deceased had fallen under the right side rear wheels of the bus. He was informed that the deceased, in a hurry, tried to reserve a seat by placing his luggage into the moving bus though the window by holding the grill of the window with one hand and that he lost control of his grip over the grill and fell down under the rear wheel of the offending vehicle and died on the spot.

27. During cross-examination, he has stated that the accident occurred in the bus stand. He did not give any report to the police. He has surrendered and obtained bail. From the evidence of P.W.1 and R.W.1 who are proper persons to speak on the incident, it is clear that the deceased tried to keep luggage or a kerchief to reserve the seat from the right side of the bus. The driver's seat will be on the right side and a mirror also will be there immediately on the right side of the driver through which the driver can see.

28. The bus stand and the point where the bus stops is a place accessible to passengers. The deceased could have avoided the accident if had not attempted

to reserve the seat through window. Equally, the driver, since the attempt of the deceased was from the right side where the driving seat and mirror will be there to see what is happening, could have prevented the mishap by being more careful.

29. The last opportunity to prevent the accident is more on the driver, although contribution of negligence on the part of the deceased cannot be ruled out. However, taking this kind of incident as a lesson, the persons in administration of the bus depots shall take proper care by posting trained people as volunteers to guide the passengers to board into bus and also to prevent free movement of passengers in places meant for parking of vehicles. Negligence on the part of the management is also a cause for the incident.

30. As observed above, the lapse, if any, on the part of the deceased is only with regard to taking precaution. But there is failure of duty on the part of the respondents. The respondent had every duty to take all the precautions and the driver also had a reasonable duty to prevent the mishap. When the comparative breach is examined between the deceased and the respondents, the lapse, if any on the part of the deceased is found to be trivial and negligible, whereas the breach on the part of the respondents is found to be substantial, amounting to breach of the duty constituting negligence, since they are engaged in trade and commerce. In view of the above reasoning, the findings of the learned MACT with regard to negligence of the driver of the offending vehicle are accepted.

(ii) Quantum of compensation:

Precedential guidance:

31(i). For having uniformity of practice and consistency in awarding just compensation, the Hon'ble Apex Court provided guidelines as to adoption of multiplier depending on the age of the deceased in ***Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Anr.***⁵ and also the method of calculation as to ascertaining multiplicand, applying multiplier and calculating the compensation *vide* paragraph Nos.18 and 19 of the Judgment.

(ii). Further, the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Others***⁶ case directed for adding future prospects at 50% in respect of permanent employment where the deceased is below 40 years, 30% where deceased is between 40-50 years and 15% where the deceased is between 50-60 years. Further, in respect of self-employed etc., recommended addition of income at 40% for the deceased below 40 years, at 25% where the deceased is between 40-50 years and at 10% where the deceased is between 50-60 years. Further, awarding compensation under conventional heads like loss of estate, loss of consortium and funeral expenditure at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is also provided in the same Judgment.

⁵ 2009 (6) SCC 121

⁶ 2017(16) SCC 680

(iii). Further in ***Magma General Insurance Company Ltd. vs. Nanu Ram and Others***⁷, the Hon'ble Apex Court observed that the compensation under the head of loss of consortium can be awarded not only to the spouse but also to the children and parents of the deceased under the heads of parental consortium and filial consortium.

Just Compensation:

32. In ***Rajesh and others vs. Rajbir Singh and others***⁸, the Hon'ble Supreme Court in para Nos.10 and 11 made relevant observations, they are as follows:

10. Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa case [Nagappa v. Gurudayal Singh, (2003) 2 SCC 274 : 2003 SCC (Cri) 523 : AIR 2003 SC 674] , it was held as follows: (SCC p. 280)

“10. Thereafter, Section 168 empowers the Claims Tribunal to ‘make an award determining the amount of compensation which appears to it to be just’. Therefore, the only requirement for determining the compensation is that it must be ‘just’. There is no other limitation or restriction on its power for awarding just compensation.”

The principle was followed in the later decisions in Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] and in Ningamma v. United India Insurance Co. Ltd. [(2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]

⁷ (2018) 18 SCC 130

⁸ (2013) 9 SCC 54

11. Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

Analysis of evidence and findings:

33. Claimant No.1, examined as P.W.1, deposed that the deceased, having a turnover of more than Rs.5,00,000/- per annum, was getting around Rs.50,000/- net income per annum and was submitting returns / turnover to the Sales Tax Department. The age of the deceased as per Ex.A2-Inquest Report and Ex.A3-Post-mortem Report is shown as '47' years. As per the evidence on record, deceased is self-employed viz. doing business by maintaining a wholesale provisions shop.

34. Upon considering the socio-economic circumstances of the year 2009 and the evidence on record, the income of the deceased can be safely accepted at Rs.5,000/- per month and considering the age of the deceased, 25% addition towards future prospects can be added, which is permissible. Then the income comes to Rs.6,250/- per month and the same come to Rs.75,000/- per annum. 1/3rd of the income of the deceased can be deducted towards personal expenditure. Then the contribution of the deceased to the family comes to

Rs.50,000/- per annum, which can be considered as the multiplicand. For the age group of '47' years, the applicable multiplier is '13'. When the same is applied, the entitlement of the claimants comes to Rs.6,50,000/- (Rs.50,000/- x 13).

35. Further, the claimants are entitled for compensation under the conventional heads i.e. Rs.40,000/- to each claimant towards loss of consortium, Rs.15,000/- towards funeral expenditure and Rs.15,000/- towards loss of estate.

36. In view of the reasons and evidence referred above, the entitlement of the claimants for reasonable compensation in comparison to the compensation awarded by the learned MACT is found as follows:

Head		Compensation awarded by the learned MACT	Fixed by this Court
(i)	Loss of dependency	Rs.3,64,000/-	Rs.6,50,000/-
(ii)	Loss of estate	Rs.10,000/-	Rs.15,000/-
(iii)	Loss of Consortium	Rs.7,000/- @ Claimant No.1	Rs.1,60,000/- @ Rs.40,000/- each claimant
(iv)	Funeral expenses	Rs.4,000/-	Rs.15,000/-
(v)	Medical expenditure	-Nil-	
	Total compensation awarded	Rs.3,85,000/-	Rs.8,40,000/-
	Interest (per annum)	9%	7.5%

Granting of more compensation than what claimed, if the claimants are otherwise entitled:-

37. The legal position with regard to awarding more compensation than what claimed has been considered and settled by the Hon'ble Supreme Court holding

that there is no bar for awarding more compensation than what is claimed. For the said proposition of law, this Court finds it proper to refer the following observations of the Hon'ble Supreme Court made in:

- (1) **Nagappa vs. Gurudayal Singh and Others**⁹, at para 21 of the judgment, that –

“..there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award “just” compensation, which is reasonable on the basis of evidence produced on record.”

- (2) **Kajal vs. Jagadish Chand and Ors.**¹⁰ at para 33 of the judgment, as follows:-

“33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.”

- (3) **Ramla and Others vs. National Insurance Company Limited and Others**¹¹ at para 5 of the judgment, as follows:-

“5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court

⁹ (2003) 2 SCC 274

¹⁰ 2020 (04) SCC 413

¹¹ (2019) 2 SCC 192

under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation”. The Motor Vehicles Act is a beneficial and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation.”

38. It is not out of place to record that, since the pleadings, evidence and the issues framed have driven the trial Court / the learned MACT to consider the case under Section 166 of the Motor Vehicles Act, the cap of compensation and the barriers in terms of Section 163-A of the Motor Vehicles Act are not applicable.

Precedential guidance with regard to quantifying compensation in a claim filed under Section 163-A beyond the caps contemplated under the said provision viz. Section 163-A:-

39. The claim in the present case is laid invoking Section 163-A of Motor Vehicles Act which suggests for adoption of II schedule to the Motor Vehicles Act in the process of quantifying the compensation. The relevant factors to be considered are:

(i). Adoption of annual income with reference to age of the deceased and multiplier mentioned therein. Even the compensation part is also specifically mentioned in II schedule in thousands. It is further mentioned that 1/3rd of the income shall be reduced towards personal expenses of the deceased. Towards general damages for funeral expenses, loss of consortium, loss of estate,

medical expenditure amounts mentioned therein shall be granted. The claim made under Section 163-A of the Motor Vehicles Act permits awarding and quantification of compensation as per the II schedule, the amount mentioned under each head are as follows:

3.General Damage (in case of death):

The following General Damages shall be payable in addition to compensations outlined above:

- | | |
|---|-----------------|
| (i) Funeral expenses | -- Rs. 2,000/- |
| (ii) Loss of Consortium, if beneficiary is the spouse | -- Rs. 5,000/- |
| (iii) Loss of Estate | -- Rs. 2,500/- |
| (iv) Medical Expenses actual expenses incurred before death supported by bills/vouchers but not exceeding | -- Rs. 15,000/- |

40. This schedule was inserted pursuant to Act No.54 of 1994 w.e.f. 14.11.1994 while amending Motor Vehicles Act, 1988. With regard to adding of future prospects taking note of notional income, necessity to consider more income than what is mentioned in the table contemplated in terms of Section 163-A and awarding compensation under the conventional heads etc., Hon'ble Apex Court in a case between **Kurvan Ansari Alias Kuran Ali and Another vs. Shyam Kishore Murmu and another**¹², discussed the legal position with reference to earlier directions of the Apex Court in the context of considering a claim of a minor boy (non earning group) and adherence to cap of Rs.15000/- per annum as the income of the deceased. Relevant observations are made in paragraph

¹² (2022) 1 SCC 317

Nos.12 to 15 of the judgment as to non-binding nature of caps fixed under Section 163-A and necessity to take increase notional income by taking note of inflation and devolution of rupee and increase cost of living. The observations are as follows:

12. *In the judgment in Puttamma [Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574] , this Court has observed that the Central Government was bestowed with the duties to amend Schedule II in view of Section 163-A(3) of the Motor Vehicles Act, 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs 1,00,000 (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs 1,50,000 (Rupees one lakh fifty thousand only) for the non-earning persons of more than 5 (five) years old.*

13. *In R.K. Malik [R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 : (2009) 5 SCC (Civ) 265 : (2010) 1 SCC (Cri) 1265] also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs 15,000 per annum should be enhanced and increased as the same continued to exist without any amendment since 14-11-1994. In Kishan Gopal [Kishan Gopal v. Lala, (2014) 1 SCC 244 : (2014) 1 SCC (Civ) 184 : (2014) 1 SCC (Cri) 241] where the deceased was a ten-year-old child, this Court has fixed his notional income at Rs 30,000 per annum.*

14. *In this case, it is to be noted that the accident was on 6-9-2004. In spite of repeated directions, Schedule II is not yet amended. Therefore, fixing notional income at Rs 15,000 per annum for non-earning members is not just and reasonable.*

15. *In view of the judgments in Puttamma [Puttamma v. K.L. Narayana Reddy, (2013) 15 SCC 45 : (2014) 4 SCC (Civ) 384 : (2014) 3 SCC (Cri) 574] , R.K. Malik [R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 : (2009) 5 SCC (Civ) 265 : (2010) 1*

SCC (Cri) 1265] and Kishan Gopal [Kishan Gopal v. Lala, (2014) 1 SCC 244 : (2014) 1 SCC (Civ) 184 : (2014) 1 SCC (Cri) 241] , we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in Rajendra Singh [Rajendra Singh v. National Insurance Co. Ltd., (2020) 7 SCC 256 : (2020) 4 SCC (Civ) 99 : (2020) 3 SCC (Cri) 134] relied on by the learned counsel for Respondent 2 insurance company would not render any assistance to the case of the insurance company.

41. Further, the Hon'ble Apex Court in **Meena Devi vs. Nunu Chand mahto alias Nemchand Mahto & Others¹³**, while referring to **Kurvan Ansari Alias Kuran Ali and Another vs. Shyam Kishore Murmu and another** (12 supra) case adopted more income than fixed in the II schedule in the Motor Vehicles Act in a case filed in terms of Section 163-A of M.V.Act, at para Nos.14 and 15 of the judgment.

42. In view of the legal position and precedential guidance, the following points will emerge:

(i) Even in claims under Section 163-A, the caps contemplated under section 163-A as to adopting the income at a particular scale with reference to the II Schedule to the Motor Vehicles Act can be deviated from if the circumstances justify.

(ii) Even in respect of claimant under Section 163-A, awarding compensation under the heads of loss of consortium, loss of estate, funeral expenses etc. under the heads of general damages is permissible beyond

¹³ 2023 (1) SCC 204

the caps fixed in II schedule taking aid of the scales adopted by the Hon'ble Supreme Court.

(iii) It is also relevant to note that, after the amendments to the Motor Vehicles Act, 2019, under Act No.32 of 2019, the provision under Section 163-A is omitted. Consequently, the II Schedule is also omitted by Act No.32 of 2019. However, the applicability of the same to pending matters and earlier causes of action is a different aspect.

(iv) The Motor Vehicles Act being social welfare in nature and its intention being beneficial and as there are earlier directions of the Hon'ble Apex Court to take appropriate call by the legislature, it can be deemed that the limitations and caps contemplated under Section 163-A will not have any conspicuous significance in quantification and awarding of just compensation where the claimant is entitled for the same in the facts and circumstances of such case.

(v) In respect of general damages referred to in the II Schedule, like funeral expenses, loss of estate, loss of consortium, transport expenses etc., it is clear that strict adherence to the caps in the Schedule will result in defeating the object and even the purpose of law when the amounts fixed are seen.

43. Claimant invoking Section 163-A of the Motor Vehicles Act need not plead or prove negligence, but at the instance of either tortfeasor or their indemnifier, the Court if proceeds to examine negligence and apply the fault theory in

appropriate cases, the cap under Section 163-A need not be followed and the tortfeasor or their indemnifier, having invited examination of negligence which is contemplated under Section 166, cannot ask the claimant to be confined to the cap under Section 163-A. The purpose of any system of justice is to provide remedies to the victims and to restore the victims of a tort or crime to their original positions to the extent possible. Therefore, the concerns of all stakeholders connected to the process of redress and reparation should focus on providing adequate compensation. The development and culture of any society will be seen from how it treats its criminals and victims. The evolution of legal system from retribution to restoration is clear in this century. If the aim of the law is to restore what is lost and to undo the wrong, then providing adequate compensation to the victim should be considered as important as punishing or reforming the wrongdoer.

44. It is not out of place to observe that the respondents have invited finding on negligence. Then scale applicable in terms of Section 166 of the Motor Vehicles Act can be adopted and even otherwise the table and the caps mentioned therein are found to be outdated by the Hon'ble Apex Court in ***Sarla Verma (Smt.) and Ors. vs. Delhi Transport Corporation and Another.***

45. In view of the discussion made above, the findings of the learned MACT on the point of negligence are found fit to be confirmed but with regard to quantum of compensation require modification and the claimants are entitled for

compensation of Rs.8,40,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Point framed is answered accordingly.

Point Nos.2 and 3:

46. In the result,

(i) The appeal filed by the A.P.S.R.T.C. *vide* M.A.C.M.A.No.3084 of 2012 is dismissed.

(ii) The appeal filed by the claimants *vide* M.A.C.M.A.No.943 of 2014 is allowed as follows:

(i) Compensation awarded by the learned MACT in M.V.O.P.No.491 of 2009 at Rs.3,85,000/- with interest at the rate of 9% per annum is modified and enhanced to Rs.8,40,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

(ii) Claimants are liable to pay the Court fee for the enhanced part of the compensation, before the learned MACT.

(iii)Apportionment:

(a) Claimant No.1 / wife of the deceased is entitled to Rs.3,40,000/- with proportionate interests and costs.

(b) Claimant Nos.2 and 3 / children of the deceased are entitled to Rs.2,00,000/- each with proportionate interest.

- (c) Claimant No.4 / mother of the deceased is entitled to Rs.1,00,000/- with proportionate interest.
- (iv) Respondents before the learned MACT / A.P.S.R.T.C are jointly and severally liable to pay the compensation.
- (v) Time for payment /deposit of balance amount is two months.
- (a) If the claimants furnish the bank account number within 15 days from today, the respondents / A.P.S.R.T.C. shall deposit the amount directly into the bank account of the claimants and file the necessary proof before the learned MACT.
- (b) If the claimants fail to comply with clause (v)(a) above, the respondents / A.P.S.R.T.C. shall deposit the amount before the learned MACT and the claimants are entitled to withdraw the amount at once on deposit.
- (vi) There shall be no order as to costs, in the appeals.

47. As a sequel, miscellaneous petitions, if any, pending in these appeals shall stand closed.

A. HARI HARANADHA SARMA, J

Date:13.03.2026

Note:L.R. copy to be marked.

(B/o).

Knr

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.3084 of 2012 & 943 of 2014

13.03.2026

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