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APHC010672892012

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3520]**
(Special Original Jurisdiction)

THURSDAY, THE 1st DAY OF JULY 2027

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1416/2012

Between:

1. KHANGALA ANASUYA & 4 ORS, W/O.LATE NARASANNA DORA R/O.LALITHANAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.
2. KHANGALA KANAKA PRASANNA, D/O.LATE NARASANNA DORA R/O.LALITHANAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.
3. KHANGALA SAYEESWARI, D/O.LATE NARASANNA DORA R/O.LALITHANAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.
4. KHANGALA LAKSHMI PRASANNA, D/O.LATE NARASANNA DORA R/O.LALITHANAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.
5. KHANGALA LAKSHMI, W/O.LATE NAGARAJU R/O.LALITHANAGAR, RAJAHMUNDRY, EAST GODAVARI DISTRICT.

...APPELLANT(S)

AND

1. VUNGARALA KRISHNA MURTHY KRISHNA 2 ORS, S/O.SURYANARAYANA DRIVER OF TRACTOR AND TRAILOR R/O.VELANGI, KARAPA MANDAL, KAKINADA.

2. VELUGULA LATCHA RAO, S/O.LATCHANNA OWNER OF TRACTOR AND TRAILOR R/O.D.NO.3-76/69, VELANGI, KARAPA MANDAL, KAKINADA.

3. THE UNITED INDIA INSURANCE CO LIMITED, REP BY ITS DIVISIONAL MANAGER O/O.RAJAHMUNDRY, EAST GODAVARI DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court

Counsel for the Appellant(S):

1. P L RAO

Counsel for the Respondent(S):

1. V SAI KUMAR

2. T V P SAI VIHARI

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.1416 of 2012

JUDGMENT:

Introductory:

1. Claimants in M.V.O.P.No.613 of 2009 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District at Rajahmundry (for short "the learned MACT"), filed the present appeal questioning the dismissal of their petition seeking compensation of Rs.15,00,000/- for the death of one Khangala Narasanna Dora (hereinafter referred to as "the deceased") in a road traffic accident that occurred on 30.03.2009.

2. Respondent No.1 herein is the driver of the Tractor-cum-Trailor bearing Nos. AP 5T 4858 and AP 5X 2839 (hereinafter referred to as "the offending vehicle"), Respondent No.2 is the owner of the offending vehicle and Respondent No.3 is the Insurance Company with which the offending vehicle was insured.

3. For the sake of convenience, the parties will be hereinafter referred to as "the petitioners/claimants and the respondents" as and how they are arrayed before the learned MACT.

Case of the claimants:

4(i). On the fateful day i.e.30.03.2009, at about 02:00 p.m., while the deceased was returning on his motorcycle from his duty at Draksharamam to Rayavaram, Respondent

No.1 drove the offending vehicle in a rash and negligent manner, dashed against the deceased and ran over the head and body of the deceased, causing his death.

(ii). The Deceased was aged about 30 years, hale and healthy and working as a Police Constable with P.C.No.2796 under the Superintendent of Police, East Godavari District, earning Rs.15,000/- per month.

(iii). Claimant No.1 is the wife, claimant Nos.2 to 4 are the unemployed children and claimant No.5 is the mother of the deceased. They are entitled for compensation.

5. Respondent No.1 remained *ex parte* before the learned MACT.

Case of respondent No.2 as per his evidence / written statement:

6(i). Petitioners shall prove the pleaded accident, negligence of the driver of offending vehicle, age, occupation and income of the deceased.

(ii). The specific case of respondent No.2 is that the deceased himself was in a drunken state and was a habitual drunkard. He drove his motor cycle in a rash and negligent manner and caused the accident. There was no negligence on the part of respondent No.1. The insurer and owner of the motor cycle are also necessary parties. Therefore, the petition is liable to be dismissed.

Case of respondent No.3:

7. There was no negligence on the part of respondent No.1. The deceased himself is responsible for the accident. There is violation of conditions of policy by respondent No.2. Hence, respondent No.3 is not liable. The age, occupation, income of the

deceased and the compensation claimed are exaggerated. Hence, respondent No.3 is not liable to pay any compensation.

Findings of the learned MACT:

8. P.W.1 is the wife of the deceased. She is not an eye-witness to the accident. P.W.2 is an eye-witness to the accident and stated that there was negligence on the part of the Respondent No.1. But, he has admitted in his cross-examination that the deceased hit the joint angular portion of the trailer and sustained a head injury. Therefore, it is clear that there was negligence on the part of the deceased in riding the motorcycle. Unless there are abnormal circumstances, a rider may not hit the angular portion of the tractor. It is the case of Narasanna Dora / deceased lost control of the vehicle and hit the angular portion. Therefore, there is negligence on the part of the deceased.

9. P.W.3, though stated about the negligence, he is not cited by the Police as witness and if he has really witnessed the occurrence of the accident, he would have been cited as witness to the occurrence of accident and he would have given a report to the police about the accident. But, the report is given by the VRO on receipt of information about the accident. Since, P.Ws.2 and 3 did not give report, although they spoke about the accident and the witnesses, their presence at the time of the accident is doubtful and their evidence cannot be believed. When the evidence of P.W.3 is excluded and the evidence of P.W.2 is accepted that the deceased hit the angular between the tractor and trailer, the negligence on the part of the respondent No.1 need

not be believed. The negligence of the deceased himself is the cause for accident. The petitioners failed to show the negligence of the driver of the tractor and trailer. The liability of the owner and Insurance Company arises only when there is negligence. Since negligence is not proved, the petition is liable to be dismissed.

Arguments in the appeal:

For the appellants:

10(i). The learned MACT ought to have seen that the evidence of P.W.2-the eye witness along with the oral and documentary evidence of P.Ws.1 to 4, is sufficient to allow the claim as prayed for, but erroneously dismissed the petition.

(ii). Although the learned MACT held the issue relating to negligence against the claimants, it ought to have answered the other issue as to quantum as well, but avoided discussion and its duty to quantify the compensation.

For respondent -Insurance Company:

11. The dismissal is justified, particularly when the claimants failed to prove negligence.

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

13. Now, the points that arise for determination in this appeal are:

1) Whether the pleaded accident dated 30.03.2009 has occurred due to the negligent driving of respondent No.1, the driver of the offending vehicle and

whether the findings of the learned MACT on that point requires any interference; if so, on what grounds and to which extent?

2) Whether the claimants are entitled for compensation and if so, to what quantum?

3) What is the result of the appeal?

Point No.1:

Statutory and Precedential Guidance:

Statutory Guidance:

14(i). It is relevant to note that the A.P. Motor Vehicles Rules, 1989 are applicable in deciding the cases by Motor Accidents Claims Tribunals and they are made in exercise of powers conferred under Section 176 of the Motor Vehicles Act which reads as follows:

> ***176. Power of State Government to make rules.—****A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:—*
> *(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;*
> *(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;*
> *(c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;*

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed.

(ii). Chapter '11' of the A.P. Motor Vehicles Rules, 1989 commencing from Rule 455 to Rule 476A deals with the powers of the Tribunal and all other allied aspects like form of application, registration, notice to parties, appearance and examination of parties, local inspection, summary examination of parties, method of recording evidence, adjournments, framing and determination of issues, judgments and enforcements of awards, Court fee relating to claim petitions applicability of Civil Procedure Code and the application for claim basis to award the claim by the claims tribunal. Rule 476 of the A.P. Motor Vehicles Rules, 1989 reads as follows:

Rule 476: Application for claim :-

(7) Basis to award the claim :- The Claims Tribunal shall proceed to award the claim on the basis of;-

(i) Registration Certificate of the Motor Vehicle involved in the accident;

(ii) Insurance Certificate or Policy relating to the insurance of the Motor Vehicle against the Third party risk;

(iii) Copy of First Information Report;

(iv) Post-mortem certificate or certificate of inquiry from the Medical Officer; and

(v) The nature of the treatment given by the Medical Officer who has examined the victim.

(7A) Specification of amount of compensation awarded by the Tribunal to each victim:- Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

15. As per Rule 476 of the A.P. Motor Vehicles Rules, 1989, the crime record can be the basis. The official acts done are presumed to be proper until a contrary is proved particularly when some statutory recognition is given to such official records.

16. It is relevant to note that in view of the summary nature and mode of enquiry contemplated under Motor Vehicles Act and social welfare nature of legislation the Tribunal shall have holistic view with reference to facts and circumstances of each case. It is sufficient if there is probability. The principle of standard of proof, beyond reasonable doubt cannot be applied while considering a claim seeking compensation for the death or the injury on account of road accident. The touch stone of the case, the claimants shall have to establish is preponderance of probability only. The legal position to this extent is settled and consistent.

Precedential Guidance:

17(i). 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*

[1] *2009 (13) SCC 530*

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.."

(ii). In a case between ***Bhagwan Ram and Ors. Vs. Deen Dayal and Ors.***[2]***,*** while considering the nature of proof is required for believing the negligent driving in Motor Accident Claims, the Hon'ble High Court of Rajasthan found that Certificate and the copies of documents prepared by the Police on the spot, including the Challan, First Information Report etc. are admissible, even in the absence of statement of eye witnesses and the same can be the basis to believe the negligent driving of the driver of the offending vehicle, vide para-11 which reads as follows:

"11. The fact that any of the eye witness or the police personnel and authorities, who had prepared the documents - certified copies of challan Exhibit-1, First Information Report as Exhibit-2, Naksha Mauka as Exhibit-4, Halat Mauka as Exhibit-5, Postmortem Report as Exhibit-10 were not examined is of no consequence. The said documents being certified copies of public documents even in absence of such statements are admissible in evidence as held by this Court in the case of ***Rajasthan State Road Transport Corporation and Anr. v. Devilal & Ors.****, reported at 1991 ACJ 230 and* ***Shrwan Kumar v. Rajasthan State Road Transport Corporation & Ors.,*** *reported at 1995 ACJ 337. It was held by this Court in the case of* ***Shrwan Kumar*** *as under:-*

"18. Public documents like the first information report and the report of the mechanical inspection of the bus can be taken into consideration and this point is no longer res integra so far as this court is concerned. In Rajasthan State Road Transport Corporation v. Devilal, 1991 ACJ 230 (Rajasthan) , it was observed that strictly speaking, provisions of Evidence Act are not applicable before the Tribunal;

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[2] *2013 (0) sc (Raj) 812*

if a document is a certified copy of a public document it need not be proved by calling a witness or the person who prepared it."

(iii). In ***Anitha Sarma and Others Vs. New Indian Assurance Company Ltd***.[3], the Hon'ble Apex Court observed that in Motor Accident Claims, standard of proof required is the preponderance of possibilities but not beyond reasonable doubt; approach and role of the Courts, while examining the evidence in accident cases, ought not to be to find fault with non-examination of the best eye witnesses, as may happen in criminal Trial, but instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. The observations in para-17 are as follows:-

"17. *Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in* ***Parmeshwari v. Amir Chand [Parmeshwari v. Amir Chand, (2011****) 11 SCC 635 : (2011) 4 SCC (Civ) 828 : (2011) 3 SCC (Cri) 605] , viewed that : (SCC p. 638, para 12)*

"12. The other ground on which the High Court dismissed [Amir Chand v. Parmeshwari, 2009 SCC OnLine P&H 9302] the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total

[3] 2021(1) SCC 171

approach of the High Court, unfortunately, was not sensitized enough to appreciate the plight of the victim.

…

'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.'"

(iv). In a case between ***New India Assurance Company Ltd., Vs. Kethavarapu Sathyavathi and Ors.***[4]**,** the Hon'ble Division Bench of High Court of Andhra Pradesh has referred to Section 168, 169 of M.V. Act and Rule 476(7) of A.P. Motor Vehicles Rules and also catena of decisions. The point for consideration before the Hon'ble Division Bench was that in holding an inquiry in terms of Motor Vehicles Act, what is the procedure to be followed and whether the F.I.R. can be basis for considering the claim. Observations in para 5 to 7 are as follows:

"5. Point:

Under Section 168 of the Motor Vehicles Act, 1988 (for short "the Act"), the Claims Tribunal shall give the parties an opportunity of being heard, hold an inquiry into the claim and make an award determining just compensation, etc. In holding any such inquiry, Section 169 of the Act mandates the Tribunal to follow such summary procedure as it thinks fit subject to rules. The Tribunal was conferred with the powers of a civil Court for the specified purposes and under Rule 476 of the Rules, the Claims Tribunal was directed to follow the procedure of summary trial as contained in the Code of Criminal Procedure, 1973. The Tribunal was cautioned not to reject any application on the ground of any technical flaw and was also obligated to obtain

[4] 2009 Supreme (AP) 136=2010(2) ALD 403=2009(3) ALT 260

whatever information necessary from the police, medical and other authorities. It is true that sub-rule (7) of Rule 476 of the Rules states that the Claims Tribunal shall proceed to award the claim on the basis of registration certificate of the motor vehicle, insurance certificate or Policy, copy of first information report, post-mortem certificate or certificate of inquiry from the medical officer and the nature of treatment given by the medical Officer.

6. The said sub-rule obviously refers to the relevant dependable criteria for assessment of the compensation, which is patently illustrative and can never be considered to be exhaustive. This Sub-rule stating the basis to award the claim, is obviously subject to the prohibition against depending on any technical flaw and the procedure for summary trial to be followed by the Tribunal. The said sub-rule cannot travel beyond the statutory obligation imposed on the Tribunal to determine the just compensation after an inquiry, in which an opportunity of being heard is given to the parties. The judicial determination of the questions in controversy before the Tribunal in terms of Sections 168 and 169 of the Act cannot be confined to consideration of the five documents referred to in sub-rule (7) of Rule 476 of the Rules alone and exclude any other oral or documentary evidence. The procedure of summary trial under the Code of Criminal Procedure which the Tribunal shall follow under Rule 476 of the Rules itself mandates taking all such evidence as may be produced by both sides in support of their respective versions, apart from the evidence which the Court, of its own motion, causes to be produced as per Section 262 read with Sections 254 and 255 of the said Code. Sub-rule (7) to be understood in the light of the object and scheme of the Act, is a directory provision referring to some of the documents which can offer guidance to the Tribunal in discharge of its statutory duty and the word "shall" used in the said: subrule has to be necessarily understood as "may".

7. That apart, to say that the, first information report alone should be the conclusive basis for determining the manner of the accident, even in spite of the availability of other dependable evidence on record on that aspect, will be offending the plain language of the statute and if that were the purport of sub-rule (7), it cannot

be considered valid, as any such delegated legislation cannot travel beyond the legislation itself."

(v). In ***Dulcina Fernandes v. Joaquim Xavier Cruz***[5], the Hon'ble Apex Court observed in Para 7 to 9, as follows:-

*" **7.** It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530]*

*8. In **United India Insurance Co. Ltd. v. Shila Datta** [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow : (SCC p. 518, para 10)*

"10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

…..

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. …

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

9. The following further observation available in para 10 of the Report would require specific note : (Shila Datta case [(2011) 10 SCC 509 : (2012) 3 SCC (Civ) 798 : (2012) 1 SCC (Cri) 328] , SCC p. 519)

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[5] *(2013) 10 SCC 646*

> *"10. … We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."*

18. The Hon'ble Supreme Court in a case between ***Pavan Kumar and Another vs. Harkishan Dass Mohan Lal and others***[6]**,** after referring to ***T.O.Anthony vs. Karvarnan and others***[7] and ***Andhra Pradesh State Road Transport Corporation and Another vs. K. Hemlatha and others***[8] 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 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*

[6] (2014) 3 SCC 590
[7] (2008) 3 SCC 748
[8] (2008) 6 SCC 767

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.

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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."

Analysis of evidence:

19(i). P.W.1 is not an eye-witness. P.W.2 is cited as witness by the police in the charge sheet. P.W.2 is an eye-witness to the accident. He has clearly stated in his evidence (chief-examination) that there was negligence on the part of respondent No.1 and that the deceased on his motorcycle, crossed P.W.1 and the tractor and trailer were coming from the opposite direction, driven by respondent No.1 at a high speed. Respondent No.1 lost control and dashed the deceased and the accident occurred only due to rash

and negligent driving of respondent No.1. He further stated that there is no negligence on the part of the deceased for occurrence of the accident. He was examined by the Police and cited as L.W.6 in the charge sheet. He has also informed the VRO, L.W.1 about the accident, who in turn gave a complaint to the Police. Respondent No.1 was charge-sheeted by Rayavaram Police Station for the offence under Section 304-A IPC.

(ii). During cross-examination, he has stated as follows:

> *The vehicle of deceased hit the joint angular of the trailer and sustained head injury. Both tractor and trailer and the motor cycle were driven at high speed at the time of accident. It is not true to suggest that the deceased was riding the vehicle consuming alcohol at the time of accident. I have no prior acquaintance with the deceased. I did not observe whether the tractor and trailer was driven in negligent manner. It is not true to suggest that the accident occurred not due to the negligent act of the driver of the tractor and I am deposing false at the request of the petitioners and I did not witness the occurrence of the accident. I did not give report to the police but I reported the same to the VRO. Police did not examine me.*

20. P.W.2 stated that the vehicle of the deceased hit the joint angular of the trailer and he sustained a head injury. Both the vehicles were being driven at a high speed. He has denied the suggestion that the deceased was riding the vehicle after consuming alcohol. He has, in clear terms, denied the absence of negligence on the part of the driver of the tractor. It is not known from where the learned MACT gathered so many things by way of hypothesis against P.W.2 and the drunken condition of the deceased,

without there being any clear and categorical evidence. Even the inquest report shows that the driver of the tractor drove the vehicle in a rash and negligent manner and hit the deceased. The contents depicted in post-mortem report also do not clearly indicate any alcoholic substance; on the contrary, they depict food material.

21. P.W.3 stated that he was proceeding on a motorcycle and he has seen the deceased proceeding on motorcycle. The offending vehicle came and the driver of the offending vehicle lost control and dashed the vehicle of the deceased. The negligence of respondent No.1 alone is the cause for the accident. By referring to the statement made in the cross-examination that he alone witnessed the accident and that he neither called an ambulance nor reported the accident to the Police, the learned MACT disbelieved his evidence. It is relevant to note that P.W.3 has stated that he was examined by the Police on 30.03.2009.

22(i). P.W.4 evidence is to the effect that deceased was working in the Police department. He was getting a salary of Rs.10,564/-.

(ii). During cross-examination on behalf of respondent No.2 / owner, it was elicited that the deceased was suspended for some period for attending duty in a drunken state.

(iii). During cross-examination on behalf of respondent No.3 / Insurance Company, it was elicited that unless the punishment is set aside, the deceased will not get promotion.

23. Ex.B1 is the service register. R.W.1-one Velugula Latcha Rao, is the owner of the offending vehicle. He is not cited as a witness in the charge sheet. It is not known what

has happened to the criminal case. The driver of the offending vehicle, who is proper witness, is not examined. Now, the following aspects play an import role in answering the point:

(i). As per the Statutory Guidance and Precedential Guidance, the crime record maintained by the police can be relied on for the purpose of *prima facie* case, particularly when an eye-witness cited in the charge sheet speaks about the same. To contradict or rebut such evidence, there must be convincing evidence on the part of the respondents who dispute the material prepared in discharge of official functions and got corroborated from the oral evidence of a competent witness.

(ii). R.W.1 is not an eye-witness. Respondent No.1 is also the proper person, i.e. the driver of the offending vehicle, but he is not examined. He remained *ex parte*.

(iii). What is the result of the criminal case is not known.

(iv). The previous conduct of the deceased in facing suspension for attending duty in a drunken state is given undue credence by the learned MACT to believe that the deceased was in a drunken condition at the time of the accident and that he himself dashed the tractor.

24. The reasoning of the learned MACT is found not convincing and when the same is seen in the light of the statutory guidance and precedential guidance referred above, together with the evidence available on record. Therefore, this Court finds that the pleaded accident is attributable to the negligence of respondent No.1, the driver of the offending vehicle and that the findings of the learned MACT to the contrary cannot stand

the test of law with reference to the facts on hand. Accordingly, the point framed is answered in favor of the claimants, concluding that the pleaded accident has occurred due to the negligent driving of the respondent No.1, the driver of the offending vehicle.

Point No.2:

25. Claimant No.1 is the wife, claimant Nos.2 to 4 are the daughters and claimant No.5 is the mother of the deceased. All these ladies are the legal heirs and dependents of the deceased. The learned MACT did not even choose to quantify the compensation, which reflects a lack of empathetic concern on the part of the learned MACT in addressing the case in terms of social welfare legislation.

26. The deceased was aged about '32' years as on the date of accident. As per the last pay certificate, the deceased was getting a gross salary of Rs.10,564/- per month. P.W.4 stated about the salary of the deceased.

27. Though the learned MACT framed the issues, it ought to have answered all the issues irrespective of its findings on issue No.1 as to the absence of negligence. Although the issue has not been answered by the learned MACT, the necessity to remand the matter is not found. As the material is available on record and remanding the matter to the learned MACT for the purpose of answering the issue will contribute for further delay and cause unnecessary burden and harassment to all the parties. Therefore, in view of availability of the evidence and material on record, this Court finds it proper to evaluate the evidence and answer the issue touching the quantification of compensation.

Precedential guidance:

28(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.***[9] 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. v. Pranay Sethi and Others***[10] 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.

[9] 2009 (6) SCC 121
[10] 2017(16) SCC 680

(iii). Further in ***Magma General Insurance Company Ltd. v. Nanu Ram and Others***[11], 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:

29. In ***Rajesh and others vs. Rajbir Singh and others***[12], 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]*
>
> ***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*

[11] (2018) 18 SCC 130
[12] (2013) 9 SCC 54

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.

30. The deceased was aged about '32' years. The net income of the deceased was Rs.8,676/- per month as per Ex.X1, which comes to Rs.1,04,112/- per annum. In view of permanent nature of employment, 50% addition to the income of the deceased is permissible, where upon income comes to Rs.1,56,168/-. If 1/3rd of the same is deducted towards personal expenditure, the contribution of the deceased to the claimants comes to Rs.1,04,112/-, which can be considered as multiplicand. For the age group of '32' years, the multiplier applicable is '16'. When the same is applied, the entitlement of the claimants for the compensation under the head of loss of dependency comes to Rs.16,65,792/- (Rs.1,04,112/- x 16).

31. Further, the claimants are entitled for compensation under the conventional heads i.e. Rs.15,000/- towards funeral expenditure and Rs.15,000/- towards loss of estate and Rs.40,000/- to each claimant towards loss of consortium, viz., claimant No.1 towards spousal consortium, claimant Nos.2 to 4 towards parental consortium, claimant No.5 towards filial consortium.

32. In view of the reasons and evidence referred to above, the entitlement of the claimants for reasonable compensation is found as follows:

Head		***Fixed by this Court***
(i)	Loss of dependency	Rs.16,65,792/-
(ii)	Loss of estate	Rs.15,000/-

(iii)	Loss of consortium	Rs.2,00,000/- **@ Rs.40,000/- to each claimant**
(iv)	Funeral expenses	Rs.15,000/-
	Total compensation awarded	**Rs.18,95,792/-**
	Interest (per annum)	**6%** **Considering the facts and circumstance of the case and the long lapse of time, interest is awarded at 6% per annum**

33. For the reasons aforesaid and in view of the discussion made above, the point framed is answered concluding that the claimants are entitled for compensation of Rs.18,95,792/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

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

34. 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 preposition 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[13],** 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***.[14] 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[15]*** 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 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."*

[13] (2003) 2 SCC 274
[14] *2020 (04) SCC 413*
[15] (2019) 2 SCC 192

Point No.3:

35. In the result, the appeal is allowed as follows:

(1). The order and decree dated 28.10.2011 passed by the learned MACT in M.V.O.P.No.613 of 2009 dismissing the petition are set-aside.

(2). M.V.O.P.No.613 of 2009 is allowed as follows:

(i) The claimants are entitled for compensation of Rs.18,95,792/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

(ii) The respondents before the learned MACT are liable to pay the compensation. However, respondent No.3 / Insurance Company is liable in view of the Insurance Policy.

(iii) The claimants are liable to pay the Court fee for the enhanced part of the compensation before the learned MACT.

(iv) **Apportionment:**

(a) Claimant No.1, wife of the deceased, is entitled for Rs.6,95,792/- with proportionate interest and costs.

(b) Claimant Nos.2 to 4, daughters of the deceased, are entitled for Rs.3,00,000/- each with proportionate interest.

(c) Claimant No.5, mother of the deceased, is entitled for Rs.3,00,000/- with proportionate interest.

(v) Time for payment/deposit of the amount is two months.

(a) If the claimants furnish the bank account number within 15 days from today, Respondent No.3 / Insurance Company shall deposit the amount directly into the bank account of the claimants and file the necessary proof before the learned MACT.

(b) If the claimant fails to comply with clause (v)(a) above, the respondents shall deposit the amount before the learned MACT and the claimants are entitled to withdraw the amount at once on deposit.

(3). There shall be no order as to costs in the appeal.

36. As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

A. HARI HARANADHA SARMA, J

Date:01.07.2026

Note: L.R. copy to be marked.
(B/o).
Knr

Whether the order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.1416 of 2012

01.07.2026

Knr