HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

MACMA.No.121 OF 2013

JUDGMENT:

1. Aggrieved by the order dated 21.08.2012 in M.V.O.P. No.742 of 2011 passed by the Chairman, Motor Accidents Claims Tribunal – cum –District Judge, Guntur, (for short "the Tribunal"), the appellant / claimant preferred this appeal questioning the dismissal of claim petition.

2. For the sake of brevity, the parties are referred to as per their array before the Tribunal.

3. The claimant has filed an application under Section 163-A of the Motor Vehicles Act, 1988 (short "M.V.Act") for compensation of Rs.4,00,000/- on account of the death of her son Mokkapati Satish (hereinafter will be referred to as 'the deceased'), in a motor vehicle accident that occurred on 26.04.2011.

4. The factual matrix of the claimant's case is that 26.04.2011 at about 10.00 PM, while the deceased was proceeding in his Auto bearing No.AP7 TW 3043 from Vinukonda to go to his village Chilakaluripet. When he reached Purushothapatnam, a lorry bearing No, AP-7-T 5985 (hereinafter will be referred to as 'the offending vehicle') driven by its driver rashly and negligently without observing traffic rules stopped the offending vehicle on the road. Consequently, the auto driver hit the offending vehicle from

the back side. As a result, the deceased received multiple injuries and died on the spot. On a complaint, a case in Cr. No.105/2011 was registered under sections 304-A of I.P.C. of Chilakaluripet Police Station against the offending vehicle's driver.

5. The 1st respondent, the offending vehicle's owner, remained *ex parte*.

6. The 2nd respondent filed its written statement, denying the material allegations of the petition inter alia and contended that the accident occurred only due to rash and negligent driving of the deceased himself, who drove the Auto without maintaining the safety distance and dashed the stationed lorry from behind. The offending vehicle's driver has no valid and effective driving licence to drive the vehicle, and the lorry has no valid permit and fitness certificate at the time of the accident.

7. Based on the pleadings, the Tribunal framed relevant issues. Before the Tribunal, on behalf of the claimant, PWs.1 and 2 got examined and marked Ex.A.1 to A.5. On behalf of the respondents, no oral evidence was adduced, but Ex.B1 got marked with consent.

8. After considering the evidence on record, the Tribunal held that the accident occurred due to the deceased's negligence as he drove the Auto negligently without observing the vehicles ahead on the road and dashed the stationed lorry; and the claim is dismissed.

9. I have heard the arguments of the learned counsel for both parties and perused the record.

10. Learned counsel for appellant/claimant contends that the Tribunal ought to have awarded the entire claim by considering the age and avocation of the deceased instead of dismissing without granting a single pie; the Tribunal ought to have followed **Managing Director, Bangalore Metropolitan Transport Corporation Vs. Sarojamma and another** [1] **,** wherein the Apex Court held that proof of occurrence of an accident due to the use of the motor vehicle is sufficient to claim compensation under section 163-A of M.V.Act; but as per section 166 of M.V.Act, the burden is on the petitioner to prove the rash and negligent act; the Tribunal ought to have taken into consideration of the citation reported in **2008 (4) A.L.T. Page 1 S**.C., wherein it was clearly held that the intention of the legislature and finally concluded that the claim under section 163-A of M.V.At is also for fault liability.

11. Controverting the submissions, the learned counsel for the respondents supported the findings and observations of the Tribunal.

12. Now the points for determination are:

I. Is the Tribunal justified in holding that the accident occurred due to the deceased's negligence?

[1] 2008 (4) A.L.D. Page 1 S.C.

II. Is the claimant entitled to compensation for the death of her son?

POINT NO.I:

13. As seen from the Tribunal's order, it has observed that even in a claim petition filed under section 163-A of the Motor Vehicle Act, the parties to the claim must prove the manner of the accident, by relying on the Apex court judgment in **National Insurance company Limited Vs. Sinitha and others**[2], wherein, it observed that even the claim under section 163-A of the M.V.Act is a fault liability, but the difference between section 163-A and 166 of M.V.Act, the initial burden is upon the respondent to prove the manner of the accident, whereas, in section 166 of the M.V.Act, the burden is on the petitioner to prove rash and negligent Act.

14. The Tribunal further observed a lot of change in law and the principle laid down in the recent Judgment of the Hon'ble Supreme Court is totally different from 2008 (4) A.L.D. page 1 S.C.

15. It is pertinent to refer in the case of **United India Insurance Company Limited Vs. Sunil Kumar and another**[3]**,** the Apex Court observed as follows:

> Unable to agree with the reasoning and the conclusion of a two-Judge Bench of this Court in *National Insurance Company Ltd.* v. *Sinitha*[4]*,* a coordinate Bench of this Court by order dated

[2] A.I.R. 2012 SC 792
[3] (2019) 12 SCC 398
[4] (2012) 2 SCC 356 : (2012) 1 S.C.C. (Civ) 881 : (2012) 1 S.C.C. (Cri) 659

29-10-2013[5] Has referred the instant matter for a resolution of what appears to be the following question of law:

> "Whether in a claim proceeding under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") it is open for the insurer to raise the defence/plea of negligence?"
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> .....

In *the Sinitha case*, a two-Judge Bench of this Court understood the scope of Section 163-A of the Act to be enabling an insurer to raise the defence of negligence to counter a claim for compensation. The principal basis on which the conclusion in *the Sinitha case* was reached and recorded is the absence of a provision similar to sub-section (4) of Section 140 of the Act in Section 163-A of the Act. Such absence has been understood by the Bench to be a manifestation of a clear legislative intention that, unlike in a proceeding under Section 140 of the Act where the defence of the insurer based on negligence is shut out, the same is not the position in a proceeding under Section 163-A of the Act.

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In fact, in ***Hansrajbhai V. Kodala***[6], the Bench had occasion to observe that : (S.C.C. pp. 188-89, para 15)

"*15.* ... Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles."

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From the above discussion, it is clear that the grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication there is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the insurer and/or to

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[5] *United India Insurance Co. Ltd.* v. *Sunil Kumar,* (2014) 1 SCC 680 : (2014) 1 S.C.C. (Civ) 642

[6] *Oriental Insurance Co. Ltd.* v. *Hansrajbhai V. Kodala*, (2001) 5 SCC 175: 2001 S.C.C. (Cri) 857

> understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind the introduction of Section 163-A of the Act, namely, final compensation within a limited time-frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. To understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act on a par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention.
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> For the aforementioned reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act; it is not open for the insurer to raise any defence of negligence on the victim's part.

16. Sub-section (1) of Section 163-A contains a non-obstante clause in terms whereof, notwithstanding anything contained in this Act or any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the second schedule, to the legal heirs or the victim, as the case may be.

17. In view of settled legal position on the subject, the claimant need not plead or prove the aspect of negligence in a claim under Section 163-A of the M.V. Act. When the claimant need not plead or prove the aspect of negligence, the issue of negligence would not arise while considering the claim under Section 163-A of the M.V.Act.

18. Following the principles of law laid down by the Apex Court, this Court views that in a petition filed under section 163-A of the M.V.

Act, wherein the cause of the accident is not at all the question to be decided, and mere involvement of the vehicle is sufficient to entitle a person claiming compensation to seek the same. When two vehicles are involved in an accident, and the passenger or driver of one vehicle makes an application invoking Section 163-A of the M.V.Act, against the driver, owner and insurer of the other vehicle, no issue relatable to the negligence at the hands of the driver of another vehicle would arise for decision. Therefore, it would be necessary to quote the scheme under Section 163-A, and the proof of negligence is irrelevant. Consequently, contributory negligence is also irrelevant. This Court views that an examination of section 163A of the M.V. Act indicates that what is required to be made good is the factum of death or injuries of permanent disability in nature having occurred to a person due to the use of the motor vehicle on the road involved in the accident and irrespective of who has contributed or who was negligent for the cause of the accident, owner and the insurer of the vehicle being made liable to pay compensation as per the structured formula as indicated in the second schedule of the M.V.Act.

19. At the outset, it may be mentioned that after appreciation of the oral and documentary evidence on record, the Tribunal observed that the accident was not occurred due to the use of a lorry bearing No.AP07 T 5985, the 2nd respondent, being the insured, is not

liable to indemnify the loss whatever the insured 1st respondent, sustained. To come to such a conclusion, the Tribunal observed that the lorry was not in use and was not in a moving condition and that the accident was not occurred due to the use of a lorry bearing No.AP07 T 5985 and that accident was not occurred due to rash and negligent or rash acts of the driver of the lorry bearing No.AP07 T 5985.

20. The Tribunal has also observed that the offending lorry was stationed on the road and the driver of Auto Mokkapati Satish drove the Auto without noticing the stationed lorry on the road and hit the rear portion of the lorry, thus the accident was caused.

21. At this stage, it would be fruitful to refer in the case of **New India Assurance Company Ltd** *Versus* **Sabana Bano And Ors[7],** the High Court of Rajasthan held that:

> Before we can interpret the phrase "use of the motor vehicle", we need to notice that the relevant words are "due to accident arising out of the use of the motor vehicle". It is not necessary that an accident would arise out of the use of a motor vehicle only when the motor vehicle is in motion. An accident can and does occur even when the vehicle is stationary but is being employed by person(s) for the purpose of transporting either the person himself or others or objects. The word "use" cannot be restricted to a narrow circumference. For to do so would be to breach the very spirit of Section 163-A of the Act. Needless to say, Section 163-A of the Act is part of a socially beneficial piece of legislation. The said section was inserted in the year 1994 in order to bring in no fault concept and in order to deviate from the law of tort, which requires the claimants first to establish the negligence on the part of the tortfeasor. It is for this very purpose that Section 163-A of the Act begins with a long non-obstante clause. The non-onbsante clause clearly declares that "Notwithstanding anything contained in this Act or any in any other law for the time being in force or instrument having the

[7] 2015 0 ACJ 404

> force of law". Thus a non-obstante clause has been used in its widest amplitude. Therefore, to interpret the word "use" to mean only a moving vehicle would violate the very spirit and to raison d'etre for bringing the section into the Act.
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> According to Afshar, who is an eyewitness, the motorcycle had been parked when another vehicle collided with it. Merely because the motorcycle had been parked would not imply that the motorcycle was not in "use" when the accident occurred. After all, if the accident had not occurred, considering the fact that Ahmed and his two friends were trying to return back home, obviously, they would have driven off. Thus, the fact that momentarily the motorcycle was parked would not take the case out of the ambit and scope of Section 163-A of the Act.

22. In **Fazaluddin and Peri Jan, Nagar** *Vs.* **Oriental Insurance Company Limited and Ors[8],** the High Court of Karnataka held that:

> In this regard, it is to be noted that the above claim petition is filed under Section 163A of the Motor Vehicles Act, 1988, wherein the cause of the accident is not at all the question to be decided, and mere involvement of the vehicle is sufficient to entitle a person claiming compensation to seek the same. In the circumstances, though a finding is given with regard to the contributory negligence on the part of the rider of the motorbike of which the victim was a pillion rider, that by itself, will not exonerate the insurer of the scooter to pay the amount of compensation as awarded by indemnifying the owner of the other vehicle viz., the scooter, which is involved in the accident and cannot limit its liability to the extent of only 50%, as basically the petition is under Section 163A of the MV Act.

23. In the aforesaid conspectus and position of law and a reading of the above would make it clear that the Tribunal has erred in observing that it is necessary that an accident would arise out of the use of a motor vehicle only when the motor vehicle is in motion.

24. Reverting to the facts of the case, the claimant got examined as PW.1. She narrated the manner of the accident in her chief examination affidavit. But, in the cross-examination, she admitted that she was not a direct witness to the accident. The claimant got

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[8] 2015 0 ACJ 1271

examined, the brother of deceased M. Satish as PW.2 who claimed to be an eyewitness to the accident. But in cross-examination, it has come out that on receipt of information about the accident, he went to the hospital and saw his younger brother. The respondents also have not examined any eyewitness to prove the manner of the accident. In the facts of the case, the Tribunal has gone through the Ex.A1-Certified copy of F.I.R. and Ex.A5-Certified copy of the charge sheet. Ex.A.1 shows that the accident occurred due to rash and negligent acts on the part of the offending lorry's driver. However, it was lodged by PW.2, who had not witnessed the accident. By recording the said reason, the Tribunal has not accepted the contents of the report. However, Ex.A-5 shows that the charge sheet is filed against the offending lorry's driver after due investigation of the offence by the Sub Inspector of Police, Chilakaluripeta Police station. It is apt to record herein that the Tribunal has not given prominence to the contents of the charge sheet on the ground that mere filing of the charge sheet is not sufficient, and the Tribunal must decide rash and negligent acts of the driver. The death of the deceased due to injuries sustained in the accident is not disputed by either party. It is also evident from Ex.A.2-Inquest report and Ex.A.3-Postmortem report. The Tribunal considering Ex.A.4-M.V.I report, observed that Motor Vehicle Inspector found the damage to the rear right side signal lights

broken. It is also observed that there is no proof of whether the lorry was stationed in the middle of the road or by the side of the road with or without parking lights, and no rough sketch is produced by both party.

25. It has often been stated by this Court, the normal rule is for the claimant to prove the negligence. But in accident cases, hardship is caused to the claimant as the true cause of the accident is not known to them but is solely within the knowledge of the respondent who caused it. It will then be for the respondents to establish the accident was due to some other cause than his negligence.

26. No reliable evidence is placed by the respondents to show that the contents of the charge sheet are incorrect. In the case of **K.Rajani and others, V. M.SatyanarayanaGoud and others**[9]**,** the Hon'ble High Court is pleased to observe that:

> *"when the insurance company came to know that the police investigation is false, they must also challenge the charge sheet in appropriate proceedings. If at all the findings of the police are found to be totally incorrect, it is for the insurance company to produce some evidence to show that the contents of the charge sheet are false".*

27. In the case of **Bheemla Devi V. Himachal Road Transport Corporation**[10]**,** the Hon'ble Apex Court observed as follows:

> *"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 are merely to establish their case on the touch stone of preponderance of probabilities. The standard of proof beyond reasonable doubt could not have been applied".*

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[9] 2015 ACJ 797
[10] 2009 ACJ 1725 (S.C.)

28. It is also appropriate to hold that nothing on record suggests that the Investigating Officer filed a charge sheet against the offending lorry driver without conducting a proper investigation. It is also difficult to hold that the Police Officer fabricated a case against the driver of the offending lorry.

29. In a proceeding under the M.V.Act, where the procedure is a summary procedure, there is no need to go by strict rules of pleading or evidence. The document having some probative value, the genuineness of which is not in doubt, can be looked into by the Tribunal for getting preponderance of probable versions. As such, it is by now well settled that even F.I.R. or Police Papers, when made part of a claim petition, can be looked into for giving a finding in respect of the happening of the accident. The preponderance of probabilities is the touchstone for concluding rashness and negligence, as well as the mode and manner of happening.

30. In the case at hand, the contents of the charge sheet show the deceased reached the outskirts of the purushothapatnam at 10.00 PM on 26.04.2011. The offending lorry driver, without taking any precautions by not blinking the parking lights, kept the stationed lorry on the blacktopped road in a negligent manner. The deceased auto driver without observing the stationed lorry hit the Auto on its rear side.

31. Section 122 of the Motor Vehicles Act 1988 deals with leaving

vehicles in a dangerous position. It states that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest in any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. The owner of the vehicle has the right to drive the vehicle on the road and also the right to park the vehicle, but the vehicle's parking cannot cause any danger or obstruction to other passers-by or passengers. This is a restriction on the road to park the vehicle. The aforesaid restriction on the road to park a vehicle is a reasonable restriction and emanates from a duty to take care of.

32. In this regard, reference could also be made to the Judgment of the Gujarat High Court in **Premlata Nilamchand Sharma vs. Hirabhai Ranchhodbhai Patel**[11], and the Judgment of the Delhi High Court in **Pushpa Rani Chopra vs Anokha Singh**[12], wherein it has been held that where the place was dark and the vehicle was parked without any sign or indication to warn other road users, negligence is on the driver of the parked vehicle and not the driver of any vehicle which dashes into a such parked vehicle.

33. Further, in the case of **Shashikala Swain & others vs Md.**

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[11] 1983 ACJ 290
[12] 1975 ACJ 396

Khairuddin & another[13], a reference has been made to Section 122 of the Act and observed that the duty cast on the driver of a stationary vehicle in a public place so as not to cause any danger, obstruction or undue inconvenience to the users of the public place and also to the other passengers.

34. It is apparent from the record that the lorry was stationed on the blacktopped road without taking any precautions, without blinking the parking lights. Therefore, there was negligence on the part of the lorry driver in parking the lorry on the road without any lights. No negligence can be attributed to the driver of the Auto as he was not supposed to imagine or gauge or expect that there was a vehicle that was parked on the road. Even if the Auto was proceeding at a moderate speed, the driver could not have avoided the unattended stationed lorry without any light on the indicator to indicate to the drivers of the vehicle proceeding in the same direction that the lorry was parked to avoid hitting the lorry.

35. When any vehicle is stationed on the road at night, as per Rule 109 of the Central Motor Vehicles Rules, 1989, proper precautions must be taken. It reads thus:

> **Parking light:**
> Every construction equipment vehicle, combine harvester and motor vehicle] and every motor vehicle other than motorcycles and three-wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking

[13] AIR 2000 Orissa 52 : 2001 ACJ 1638

> lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road: Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule
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> (2): Provided also that construction equipment vehicles [and combined harvesters], which are installed with food light lamps or sport lights at the front, rear or side of the vehicle for their off–highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched off when the vehicle is travelling on the road.

36. This rule states that front and rear parking lights shall remain lit when the vehicle is kept stationary on the road.

37. It has come on record that no such parking lights were put on by the offending lorry, so the liability of the contributory accident cannot be fastened on the auto driver by holding that he should have seen the stationed lorry under the headlight of the Auto. When there is a specific rule in respect of taking precautions by stationary lorry, if such precautions are not taken by the driver/owner of the stationary vehicle, then liability cannot be shifted on the auto driver.

38. While dealing with the plea of negligence on the part of the victim, i.e., a plea of contributory negligence in a claim under Section 163-A, in **Shivaji and another v. Divisional Manager, United India Insurance Company Limited and others**[14]**,** the Apex Court held in paragraph 4 that,

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[14] (2019) 12 SCC 395

> The issue which arises before us is no longer res integra and is covered by a recent judgment of the three Judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [(2019) 12 SCC 398], wherein it was held that to permit a defence of negligence of the claimant by the insurer and/ or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act on a par with the proceeding under Section 166 of the Act which would not only be self contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation."

39. On the basis of such settled legal position, this Court views that the accident was caused due to the negligence of the lorry driver in leaving it parked on the road, the said act of the lorry driver constitutes a hazard or danger to the road users, the onus must be held to be upon one who seeks to avoid liability arising from the accident which such vehicle to establish that despite such parking of the lorry, the accident took place due to the negligence of the other party or such other party could have avoided the accident by reasonable care and caution.

40. It goes without saying that the Tribunal has wrongly placed the onus on the claimant to establish the negligence on the part of the lorry driver. There is no dispute to the fact that the claimant has shown the involvement of the stationed lorry in the accident

in question, such being is the position of law, the Tribunal is not supposed to have dismissed the claim petition.

41. For the reasons expressed herein before, the insurance company cannot contend that the auto driver was negligent and responsible for the accident in question. Looked at from any angle, the claimant need not establish negligence on the part of the lorry driver, and it is sufficient to show the involvement of the lorry and the said fact is established. The Tribunal also accepted the said case of the claimant; but it is wrong to dismiss the claim petition in the light above settled legal position. Accordingly, the point is answered.

POINT NO.II:

42. PW.1 testified that the deceased was aged 24 years and was hale and healthy at the time of the accident, and he was the auto driver and getting Rs.3,000/- per month. In the cross-examination, she stated that her son/deceased died unmarried. She has not placed documentary evidence showing the age and earnings of the deceased. Ex.A.3-postmortem certificate shows the age of the deceased as 24 years. In the absence of any evidence on record, the evidence of PW.1 coupled with the contents of Ex.A.3, the age of the deceased as 24 years can be taken into consideration. Thus, this Court assessed the age of the deceased as '24' years at the time of accident.

43. The contents of Ex.A.1 report show that the family of the deceased owns an Auto, and he knew the driving.

44. By following the principles laid down in **Lakshmi Devi and others Vs. Mohammad Tabber**[15]**,** the Apex Court laid down a principle that, in today's world, even common labour can earn Rs.100/- per day. Based on the above principle, this Court views that the monthly earnings of the deceased can be fixed at Rs.3,000/-.

45. In the case of **R.K.Malik and others vs Kiran Paul**[16]**,** the Apex Court has held in paragraph 32 that denying compensation towards future prospects seems unjustified. Accordingly, the Apex Court awarded compensation for future prospects in a claim under section 163-A of the M.V.Act, 1988. Following the same, the annual earnings of the deceased, including future prospects, can be assessed.

46. In **National Insurance Company Ltd. vs Pranay Sethi**[17] the Apex Court, at paragraph 61, held that,

> *(iv) If the deceased was self-employed or on a fixed salary, an additional 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary computation method. The established income means the income minus the tax component.*

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[15] 2008 ACJ 488
[16] 2009 A.C.J. 1924 (S.C.)
[17] (2017) 16 SCC 680

47. Here, in this case, the deceased was self-employed, and as such, this Court views that an additional 40% of the established income should be the warrant towards future prospectus. The monthly earnings, including future prospectuses, arrive at Rs.4,200/- (Rs.3,000/- +Rs.3,000/- x 40%). Following the same, the annual earnings of the deceased, including a future prospectus, can be assessed at Rs. 50,400/-.

48. In a decision reported in **Bajaj Allianz General Insurance Company Limited, V. Anil Kumar**[18], wherein the High Court of Punjab and Haryana held that,

> under the second schedule, after assessing compensation without applying the deduction, it is laid down by way of a note that 1/3rd has to be deducted from the total compensation in consideration of the expenses of the deceased himself.

49. This Court views that 1/3rd has to be deducted towards the personal and living expenses of the deceased. Therefore, the annual dependency of the claimant comes to Rs. 33,600/- (Rs.50,400/- (-) Rs.50,400/- x 1/3.

50. In **Royal Sundaram Alliance Vs. Mandala Yadagari Goud decided on 09.04.2009 in CA.No.6600 of 2015** it is held that:

> "...A reading of the Judgment in Sube Singh (*supra*) shows that where a three-Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor to take the multiplier to be applied. This Judgment undoubtedly relied upon the case of Munna Lal Jain (supra), a three-Judge Bench judgment on this behalf. The relevant portion of the Judgment has also been extracted. Once again, the extracted portion refers to the Judgment of a three-

[18] 2015 ACJ 268

> Judge Bench in Reshma Kumari & Ors. Vs. Madan Mohan & Anr (2013) 9 S.C.C. 65). The relevant portion of Reshma Kumari, in turn, has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect of significance, and Reshma Kumari categorically states that it does not want to revisit the law settled in the Sarla Verma case on this behalf.
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> 12**.** Not only this but the subsequent Judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for calculating the multiplier.
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> 13**.** We are convinced that there is no need to take up once again this issue settled by the aforesaid judgments of the three-Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

51. There is no quarrel with the preposition that the age of the deceased shall be taken into consideration in calculating the dependency while applying the multiplier.

52. Per the second schedule for compensation for third-party fatal accidents/injury case claims, the multiplier '17' will apply to the age group above 20 but not exceeding 25 years. As indicated above, the age of the deceased is 24 years as of the date of the accident, so this Court considered the multiplier '17' in calculating the loss of income of the deceased. Therefore, the dependency loss would arrive at Rs.5,71,200/- (Rs.33,600/- x 17). The claimant is entitled to Rs.2,500/- towards loss of estate and Rs.5,000/- towards funeral expenses.

53. In **Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and another**[19] the Apex Court while referring to **Nagappa v. Gurudayal Singh**[20] held as under:

> *"It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in **Nagappa v. Gurudayal Singh (2003) 2 SCC 274**, in the absence of any bar in the Act, the Tribunal and for that any competent Court is entitled to award higher compensation to the victim of an accident."*

54. In **Ramla Vs National Insurance Co. Ltd.**,[21] the Apex Court held no restriction to award compensation exceeding the amount claimed. As such, given the principle laid down by the Apex Court, the claimant is entitled to an amount of Rs.5,78,700/- exceeding the claimed amount. However, the claimant shall pay the requisite court fee over and above the compensation awarded.

55. Following the principles laid down by the Apex Court in a catena of judgments, this Court can safely conclude that the claimant is entitled to get more than what has been claimed. Further, the Motor Vehicles Act is a beneficial piece of legislation where the interest of the claimant is a paramount consideration. The Courts should always endeavour to extend the benefit to the claimant to a just and reasonable extent.

56. As a result, the appeal is allowed without costs and the claim petition is allowed by granting the compensation of Rs.5,78,700/- (Rs.5,71,200/- + Rs.5,000/- + Rs.2,500/-) (Rupees Five Lakhs

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[19] (2011) 10 SCC 756
[20] 2003 A.C.J. 12 (SC) 274
[21] CIVIL APPEAL No.11495 OF 2018

Seventy-Eight Thousand Seven Hundred only) against the respondents 1 and 2 with costs and interest at 7.5% per annum. The claimant is directed to pay the requisite court fee on enhanced compensation over and above the compensation amount claimed. Respondents are directed to deposit the compensation amount within two months of receiving a copy of this order. The deceased's mother, i.e., the claimant, is entitled to the entire compensation amount with interest accrued. On deposit, the claimant is permitted to withdraw the whole compensation upon filing an appropriate application before the Tribunal.

57. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

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T. MALLIKARJUNA RAO, J

Date: 04.04.2023

Note: LR copy to be marked.
b/o. SAK

HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

MACMA.No.121 OF 2013

Date: 04.04.2023

SAK