IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

****

M.A.C.M.A.No. 1979 of 2008

Between:

M/s.United India Insurance Company Limited,
Represented by its Divisional Manager,
Anantapur. ... Appellant/Respondent No.3

And

1. Dasari Nageswaramma, W/o.Dasari Bodappa,
   Hindu, Aged 37 years, R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
2. Sulochanamma, W/o.Late Dasari Bodappa,
   Aged 26 years, Hindu, R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
3. Jyothi, D/o.Late Dasari Bodappa, Aged 29 years,
   R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
4. Santhi, D/o.Late Dasari Bodappa, Aged 27 years,
   R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
5. Swathi, D/o.Late Dasari Bodappa, Aged 25 years,
   R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
6. Bharathi, D/o.Late Dasari Bodappa, Aged 20 years,
   R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.
7. Vennala, D/o.Late Dasari Bodappa, Aged 6 years,
   R/o.Velpumadugu Village,
   Bathalapalli Mandal, Anantapur.

.... Respondents/Petitioners

(R.3 to R.6 are declared as majors and discharged from the guardianship of R.1 as per orders dt.05.11.2018 in M.A.C.M.A.M.P.Nos.6108 to 6111 of 2016)

8. Sake Mutyalu, S/o.Pullanna, Aged about 32 years,
   Hindu, R/o.Velpumadugu Village, Potlamarri Post,
   Bathalapalli Mandal, Anantapur District.
9. K.Kesava Reddy, S/o.Pulla Reddy, Hindu, Major,
   R/o.Velpumadugu Village, Potlamarri Post,
   Bathalapalli Mandal, Anantapur District.

.... Respondents/Respondent Nos.1 & 2

DATE OF JUDGMENT PRONOUNCED**: 15.06.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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.... Respondents/Respondent Nos.1 & 2

! Counsel for Appellant **:** Sri M.Upendra Rao

^ Counsel for Respondents 1 to 7 **:** Sri O.Uday Kumar

< Gist:

> Head Note:

? Cases referred:

1. 2017 ACJ 2700 (SC)
2. 2012 (2) TN MAC 625 Del = 2009 SCC Online Del 4291
3. 2012 (13) SCC 792
4. (2011) 13 SCC 236
5. 2009 ACJ 1298 (SC)
6. 2018 ACJ 2782 (SC)
7. 2012 SCC Online Del = 2014 ACJ 1540

This Court made the following:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No. 1979 of 2008

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act, 1988, (for short "the Act"), is preferred by the appellant-M/s.United India Insurance Company Limited, challenging Award dated 10.03.2008 delivered by the Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Anantapur, (for short "the Tribunal") in O.P.No.397 of 2006 granting compensation to the petitioners/claimants, on account of the death of the deceased-Dasari Bodappa, as prayed in the petition (Rs.2,00,000/-) with costs and interest @ 7.5% per annum thereon from the date of filing of the petition till the date of realization against the respondents 1 to 3 jointly and severally.

2. For the sake of convenience, the parties are hereinafter referred to, as they are arrayed before the Tribunal in the claim petition.

3. The factual context of the case, is as under:

(a) On 01.11.2004 the father of G.Siva Sankar (complainant), namely, G.Krishnappa, who is the uncle of the deceased–Dasari Bodappa, was admitted in Government General Hospital,

Anantapur, for treatment due to snake bite in the fields. On information, G.Siva Sankar along with his brother, Siva Kesavulu, proceeded to the hospital in a motorcycle bearing No.AP 02 G 8902 and at that time, Sake Mutyalu (R.1), who is the cousin of Siva Sankar, along with Dasari Bodappa (deceased) who is the pillion rider, were also proceeded to the hospital on the motorcycle bearing No.AP 02 L 3356. At about 7.30 p.m., when they reached near Narigappa chenu after crossing Bathalapalli, on the national high way, R.1-Sake Mutyalu, who is the rider of the motorcycle bearing No.AP 02 L 3356, drove the same in a rash and negligent manner and dashed behind the motorcycle bearing No.AP 02 G 8902, due to impact, R.1-Sake Mutyalu, the deceased-Dasari Bodappa, Siva Sankar and Siva Kesavulu fell down from their respective motorcycles and received bleeding injuries. The deceased-Dasari Bodappa, who was the pillion rider of the motorcycle bearing No.AP 02 L 3356, sustained head injury. All the injured were shifted to the Government General Hospital, Anantapur, for treatment. On the advice of the Doctor, the deceased-Dasari Bodappa was shifted to the Government Hospital, Kurnool and while undergoing treatment, he succumbed to injuries.

(b) The matter was reported to the Police alleging that the accident took place as a result of rash and negligent driving of the rider of the motorcycle bearing No.AP 02 L 3356. Based on the complaint lodged by the complainant-Siva Sankar, a case in Crime No.84 of 2004 was registered by Bathelapalli Police against the accused (respondent No.1 in the O.P.) for the offences punishable under Sections 337 and 338 IPC. After investigation of the case, a charge sheet was submitted before the learned Judicial magistrate of First Class, Dharmavaram, against the accused, who was the rider of the motorcycle bearing No.AP 02 L 3356, for the offences punishable under Sections 337, 338 and 304-A IPC.

(c) The Petitioners 1 and 2 who are the wives and Petitioners 3 to 7, who are minor children of the deceased filed an application claiming compensation of a sum of Rs.2,00,000/- before the Tribunal, on account of the death of the deceased-Dasari Bodappa, in the said road traffic accident.

(d) The 1st & 2nd respondents, who are the driver and owner of the motor cycle bearing No.AP 02 L 3356, did not contest the matter.

(e) The 3rd respondent/Insurance Company, filed a counter contending *inter alia* that the alleged accident occurred due to

the rash and negligent driving of the riders of both the motorcycles and as such, the Insurer/3rd respondent, is not liable to pay the compensation. It is further contended that the deceased was the pillion rider of the vehicle and therefore, the risk of the pillion rider would not cover under the Policy. The Insurer is not liable to pay the compensation and even the compensation claimed by the petitioners is excessive and prays to dismiss the petition with costs.

(f) In view of the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the rider of the Hero Honda C.D Dawn Motor cycle bearing No.AP 02 L 3356 i.e. R-1 drove the vehicle in a rash and negligent manner or not?

(2) Whether the petitioners are entitled to compensation, if so, what amount and from which respondent?

(3) To what relief?

(g) In order to establish their claim, at the time of trial before the Tribunal, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were got marked on behalf of the petitioners. The Assistant Manager of the 3rd respondent/Insurance Company was examined as R.W.1 and Exs.B1 and B.2 were got marked on their behalf.

(h) The Tribunal, after analyzing the entire evidence on record, passed an award for a sum of Rs.2,00,000/- as compensation. The breakup details of the compensation awarded by the Tribunal, are tabulated hereunder:

S.No.	**Head of Compensation**	**Amount of compensation awarded**
1	Loss of earnings	Rs.1,92,000/-
2	Loss of consortium	Rs. 5,000/-
3	Funeral expenses	Rs. 2,000/-
4	Loss of Estate	Rs. 2,500/-
	Total	Rs.2,01,500/-

(i) The learned Tribunal restricted the award to Rs.2,00,000/- as prayed in the petition, the break up details stated in Paragraph No.13 of the award.

(j) Aggrieved by and dissatisfied with, M/s.United India Insurance Company Limited, being the appellant herein, has challenged the award mainly on the ground that the Tribunal ought to have seen that Ex.B.1/Insurance Policy does not cover the risk of the pillion rider (deceased) as no extra premium was paid at the time of making Ex.B1/insurance policy, and therefore, risk coverage of the pillion rider would not come under Ex.B1 and on that ground, prays to allow the appeal.

4. During the course of arguments, the learned Standing Counsel for the appellant/Insurance Company has contended

that the compensation awarded by the Tribunal is not in accordance with law. Further, it is contended that Ex.B1/policy is not covered by the risk of the pillion rider (deceased) of the motorcycle as there was no extra premium was paid by the insured. Therefore, urged to exonerate the Insurance Company from its liability.

5. Learned counsel for the respondents 1 to 7/claimants would submit that by the time of accident, the deceased used to attend agricultural works and used to do milk business and was earning Rs.6,500/- per month. The Tribunal, without taking note of the said fact, erroneously fixed the income of the deceased at Rs.1,500/- per month and awarded meager amount of compensation towards loss of earnings. He would further submit that it was proved before the Tribunal that Ex.B1/Insurance Policy taken by the 2nd respondent was in existence at the time of the accident. He further argued that the 2nd respondent had taken the "Motorcycle/Scooter Package Policy" and as per its terms and conditions, it is clear that it covers the risk of the pillion rider. Therefore, the claimants are entitled to the compensation from the appellant/Insurance Company. He would further submit that the claimants are entitled to the claim amount under the conventional heads as

per the decision of the Hon'ble Apex Court in ***National Insurance Company Vs. Pranay Sethi***[1]. He would further submit that the amount of compensation awarded by the Tribunal is absolutely not justified, which called for interference of this Court in this appeal. Therefore, the appellant-Insurance Company alone, is liable to pay the compensation.

6. Now the points that arise for consideration in this appeal are:

> "*1. Whether under Comprehensive/Package Policy, the Insurance Company is liable to pay the compensation for the death of a pillion rider of a two-wheeler?*
>
> *2. Whether the compensation awarded by the Tribunal is just and reasonable, in the facts and circumstances of the case, or requires interference of this Court for enhancement?"*

7. Considered the submissions of the both the learned counsels, perused and assessed the entire evidence including the exhibited documents available on record.

POINT No.1:

8. A perusal of the impugned award would show that the Tribunal has framed the Issue No.1 as to whether the accident had occurred due to the rash and negligent driving of the rider of

[1] 2017 ACJ 2700 (SC)

the motorcycle bearing No.AP 02 L 3356 to which the Tribunal, after considering the evidence of the witnesses coupled with the documentary evidence, has categorically observed in its judgment at Para No.11 that the alleged accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing No.AP 02 L 3356 and answered the issue in favour of the claimants and against the respondents. Therefore, this Court is of the view that there is no reason to interfere with the findings of the Tribunal that the alleged accident occurred due to the rash and negligent driving of the rider of the offending motorcycle bearing No.AP 02 L 3356.

9. Insofar as the liability of the appellant/Insurance Company is concerned, the risk of the pillion rider of the motorcycle in question was covered under the Comprehensive/Package Policy. On this aspect, in **Yashpal Luthra & Another Vs. United India Insurance Co., Ltd. & Another**[2] the High Court of Delhi, at Para No.27, held as follows:

> ***27.*** *In view of the aforesaid, it is clear that the comprehensive/package Policy of a Two-Wheeler covers a pillion rider and comprehensive/package Policy of a Private car covers the occupants and where the vehicle is covered under a Comprehensive/Package Policy, there is*

[2] 2012(2) TN MAC 625 Del = 2009 SCC Online Del 4291

no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a Private Car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

10. The Hon'ble Supreme Court, while referring the above said decision Yashpal Luthra (supra), in ***Oriental Insurance Company Limited Vs. Surendra Nath Loomba & Others***[3] held at Para No.14 and it reads thus:

"14. Recently this Bench in National Insurance Company Ltd. v. Balakrishnan & Another[10], after referring to various decisions and copiously to the decision in Bhagyalakshmi (supra), held that there is a distinction between "Act Policy" and "Comprehensive/Package Policy". Thereafter, the Bench took note of a decision rendered by Delhi High Court in Yashpal Luthra and Anr. V. United India Insurance Co. Ltd. and Another[11] wherein the High Court had referred to the circulars issued by the Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA). This Court referred to the portion of circulars dated 16.11.2009 and 3.12.2009 which had been reproduced by the High Court and eventually held as follows: -

> *"24. It is extremely important to note here that till 31st December, 2006 Tariff Advisory Committee and thereafter from 1st January,*

[3] 2012 (13) SCC 792

2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court the Competent Authority of IRDA had stated that on 2nd June, 1986 the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. He had also admitted that the comprehensive policy is presently called a package policy. It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

25. It is also worthy to note that the High Court after referring to individual circulars issued by various insurance companies and eventually stated thus:-

> *"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/ package policy of*

> *a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."*

26. In view of the aforesaid factual position there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing than a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have

> *been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.*
>
> *27. In view of the aforesaid legal position the question that emerges for consideration is whether in the case at hand the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a comprehensive policy but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a package policy to cover the liability of an occupant in a car."*

11. In view of the decisions referred to above, the Insurance Company is liable to pay the compensation in respect of pillion rider on a two-wheeler under the Comprehensive/Package Policy issued by the Insurer. In the present case, at the top of Ex.B.1/Insurance Policy, it was mentioned as "Motorcycle/Scooter Package Policy". Therefore, this Court deems it fit and proper to direct the 3rd respondent/Insurance Company to pay the compensation to the claimants/Respondents 1 to 7.

POINT No.2:

12. So far as the quantum of compensation awarded by the Tribunal is concerned, it is not justified, contra to the judgment

of the Hon'ble Supreme Court in *Pranay Sethi's* case (supra) for awarding compensation towards the loss of earnings and other conventional heads.

13. The Tribunal, while assessing the compensation payable to the claimants, took into consideration of the aspect that no documentary proof was filed to prove that the deceased got the landed property as well as he was doing milk business and the Tribunal fixed the income of the deceased as Rs.50/- per a day as a labour and monthly income as Rs.1,500/- in contrary to the Hon'ble Apex Court's judgment. Therefore, this Court is of the view that the deceased-Dasari Bodappa can be treated as a labour/coolie and his monthly income, on the date of the accident was taken into consideration as per the decision of the Hon'ble Apex Court in ***Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited***,[4] wherein, at Para Nos.13 & 15, it was held as follows:

> *"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz., in the year 2004, was `100/- per day. This assumption in our view has no basis.*

[4] (2011) 13 SCC 236

> *Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*
>
> *14.....*
>
> *15. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-."*

14. The above decision is crystal clear that the accident occurred in the year 2004 and the wage of the labour was between Rs.100/- to Rs.150/- per a day or Rs.4,500/- per month and the deceased was a coolie and was earning Rs.4,500/- per month at the time of the accident, and accordingly, monthly earnings of the deceased at Rs.4,500/- was determined by the Hon'ble Apex Court. In the present case, the

alleged accident occurred in the year 2004. Therefore, this Court is of the considered view that the monthly earnings of the deceased can be taken at Rs.4,500/- by treating him as a labour/coolie by following *Ramachandrappa's* case (supra). Therefore, there is no reason for the Tribunal to determine the monthly earning of the deceased to be a sum of Rs.1,500/-, in contrary to the Hon'ble Apex Court's judgment referred *supra*.

15. To grant compensation under various heads, now it is necessary to refer to the decision in **Sarla Verma Vs. Delhi Transport Corporation**[5], at Para-9 held as follows:

> *9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.*

16. A perusal of Exs.A.1 to A.4/FIR, Inquest Report, Post Mortem Certificate and Charge Sheet respectively, would show that the age of the deceased at the time of accident was '40'

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[5] *2009 ACJ 1298 (SC)*

years and based on the said documents, this Court has taken into consideration the age of the deceased as '40' years. Since the deceased was a labourer and he was between the age group of 36-40 years by the date of accident, the Tribunal committed an error in applying the multiplier '16' instead of '15' contrary to the guidelines in *Sarla Verma's* case (supra), wherein, the loss of dependency was thus reassessed at para-21 of the decision, as under:

> *"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

17. In the instant case, evidently, the deceased was survived by two wives (R.1 and R.2) and minor children (R.3 to R.7). Therefore, the number of his dependent family members is seven. According to *Sarla Verma's* case (supra), 1/5th of the income of the deceased should be deducted towards his personal and living expenses. On this aspect, the observation of the Hon'ble Apex Court in *Sarla Verma's* case, at para-14, is as under:

> *"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."*

18. On an overall view of the principles laid down in the above judgments, this Court is of the considered opinion that if the monthly income of the deceased is taken as Rs.4,500/-, the annual income would be worked out to Rs.54,000/- (Rs.4,500/- x 12 = Rs.54,000/-). 1/5th of the said amount would be arrived at Rs.10,800/- (Rs.54,000 x 1/5 =Rs.10,800/-). After deducting the same towards his personal and living expenses, the annual income of the deceased would be arrived at Rs.43,200/- (Rs.54,000/- (-) Rs.10,800/- =Rs.43,200/-). Since the deceased was '40' years old at the time of death, the appropriate multiplier would be '15' for the assessment of the 'Loss of Dependency' as per the judgment of the Hon'ble Supreme Court in *Sarla Verma*'s case (supra) and therefore, the Loss of dependency is assessed at Rs.6,48,000/- (Rs.43,200/- x 15 = Rs.6,48,000/-).

19. Having applied the said multiplier, the loss of dependency would be Rs.6,48,000/-, this Court finds that the Tribunal has

committed an error while awarding compensation under loss of dependency. A reading of Tribunal's award, makes it clear that the learned Tribunal's approach does not accord at all with current judicial opinion. Therefore, the claimants are entitled to a sum of Rs.6,48,000/- under the head 'Loss of Dependency', which would be substantive.

20. On going through the Award, it is seen that the Tribunal has erroneously awarded compensation under conventional heads viz., loss of estate, loss of consortium and funeral expenses, contrary to the principles laid down in *Pranay Sethi's* case (supra) and in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram and others***[6].

Funeral expenses:

21. Under this conventional head, the Tribunal has wrongly awarded a sum of Rs.2,000/-. The same is enhanced from Rs.2,000/- to Rs.15,000/- as per the decision of the Constitution Bench in *Pranay Sethi's* case.

Loss of Estate:

22. Under this conventional head, the Tribunal wrongly awarded a sum of Rs.2,500/-. The same is enhanced from

[6] 2018 ACJ 2782 (SC)

Rs.2,500/- to Rs.15,000/-, as per the decision of the Constitution Bench in *Pranay Sethi's* case.

Loss of Consortium:

23. Under this conventional head, the Tribunal wrongly awarded a sum of Rs.5,000/- towards consortium which is not in conformity with the judgment of the Hon'ble Apex Court in *Pranay Sethi's* case. The same is enhanced from Rs.5,000/- to Rs.40,000/- each for the 1st & 2nd wives of the deceased/1st & 2nd respondents/Claimants, which comes to Rs.80,000/- (Rs.40,000/- x 2 = Rs.80,000/-).

24. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their family members, in cases of genuine claims. In pursuance of the decision of the Hon'ble Apex Court in *Magma's* (supra), the four children of the deceased (Respondents 4 to 7) are entitled to the parental consortium @ Rs.40,000/- each for the loss of the parental aid, protection, affection, society, discipline, guidance and training instead of compensation under the head of 'loss of love and affection'. Since the 3rd respondent/claimant is a married daughter by the time of passing the award by the Tribunal, she is not entitled to 'loss of consortium'. Therefore, the minor children/Respondents 4 to 7 are entitled to Rs.40,000/- each

under parental consortium, which would be arrived at Rs.1,60,000/- (Rs.40,000/- x 4 = Rs.1,60,000/-).

25. In *Sarla Verma's* case (supra) the Hon'ble Apex Court, while elaborating the concept of 'just compensation' observed as under:

> *"Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

26. In view of the ratio decided by the Hon'ble Apex Court in the decision supra, and the calculations made there-above, the total compensation payable to the Respondents 1, 2 and 4 to 7/claimants, is re-assessed as under.

S.No.	**Heads of Compensation**	**Amount of compensation awarded**
1	Loss of Dependency	Rs. 6,48,000.00 (Rs.4,500 x 12 x 1/5 = Rs.43,200/- x 15 = Rs.6,48,000/-)
2	Loss of Estate	Rs. 15,000.00
3	Funeral Expenses	Rs. 15,000.00
4	Loss of Consortium To the 1st & 2nd wives and four minor children of the deceased 40,000 x 6 (3rd respondent/claimant is the married daughter and she is not entitled to consortium)	Rs. 2,40,000.00
	Total	**Rs. 9,18,000.00**
	(-) Compensation awarded By the Tribunal	Rs. 2,00,000.00
	Enhanced amount	Rs. 7,18,000.00

27. In the present case, though the claimants did not file any cross-objections, it is well-settled that Order XLI Rule 33 CPC empowers the Appellate Court to grant relief to a person, who is neither appealed nor filed any cross-objections. The object of this provision is to do complete justice between the parties. In ***National Insurance Company Limited Vs. Komal and others***[7] it is crystal clear that under Order XLI Rule 33 CPC, the Appellate Court has the power to enhance the compensation even in the absence of any Cross Objections. Para No.12 of the decision reads as follows:

> *"12. Section 168 of the Motor Vehicles Act, 1988 empowers the Court to award such compensation as appears to be just which has been interpreted to mean just in accordance with law and it can be more than the amount claimed by the claimants. The provisions of the Motor Vehicles Act, 1988 are clearly a beneficial legislation and hence should be interpreted in a way to enable the Court to assess just compensation. The scope of Order XLI Rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the award amount in accident cases in the absence of cross- objections has been discussed by the Supreme Court in Nagappa v. Gurudayal Singh, AIR 2003 SC 674 where the Apex Court has held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections."*

[7] 2012 SCC Online Del 2442 = 2014 ACJ 1540

28. Under the above provisions of the Motor Vehicles Act, 1988, there is no restriction that the compensation could be awarded only upto the amount claimed by the claimants. In an appropriate case, where from the evidence brought on record, if the Tribunal/Court considers, the claimant is entitled to get more compensation than the claimed. Following the guidelines in the decisions supra, this Court is of the view that the claimants are entitled to enhance the compensation at the appellate stage even without the filing an appeal or cross-objections.

29. Therefore, in view of the foregoing discussion, this Court is of the opinion that the award passed by the Tribunal warrants interference to enhance the compensation from Rs.2,00,000/- to Rs.9,18,000/-.

30. For the reasons as aforesaid, the appeal preferred by the appellant/M/s.United India Insurance Company Limited is hereby dismissed and the compensation amount is enhanced from Rs.2,00,000/- to Rs.9,18,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization, against the Respondents 2 and 3 (owner and insurer) jointly and severally.

(ii) The respondents 2 & 3 are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

(iii) The claimants are directed to pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation awarded by the Tribunal.

(iv) On such deposit, the claimants are permitted to withdraw the amount with accrued interest and costs as apportioned by the Tribunal, by filing proper application before the Tribunal.

(v) The impugned award of the learned Tribunal stands modified to the aforesaid extent and in the terms and directions as above.

(vi) The record be sent back to the Tribunal within three weeks from this day.

(vii) As a sequel, interlocutory applications pending for consideration, if any, shall stand closed.

JUSTICE DUPPALA VENKATA RAMANA

15.06.2023
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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No. 1979 of 2008

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