



**HIGH COURT OF ANDHRA PRADESH**  
THURSDAY ,THE SIXTEENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO**

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3485 OF 2008**

**Between:**

1. THE NEW INDIA ASSURANCE CO. LTD. Divil. Manager, Srikakulam.

**...PETITIONER(S)**

**AND:**

1. RAVVA VIJAYALAKSHMI & 8 OTHERS W/o. Late Ramarao  
R/o. Gollaveedhi, Nellimarla, Vizianagaram District.
2. Ravva Suresh S/o. Late Ramarao  
(Respondent No.2 being minor rep. by his Natural Mother  
1st Respondent)  
R/o. Gollaveedhi, Nellimarla, Vizianagaram District.
3. Ravva Dhanunjayarao S/o. Late Ramarao  
(Respondent No.3 being minor rep. by his Natural Mother  
1st Respondent)  
R/o. Gollaveedhi, Nellimarla, Vizianagaram District.
4. Ravva Geetha Krishna S/o. Late Ramarao  
(Respondent No.3 being minor rep. by his Natural Mother  
1st Respondent)  
R/o. Gollaveedhi, Nellimarla, Vizianagaram District.
5. Gedela Krishna S/o. Venkanna  
Driver of Tractor AP-31-U-T/R-0999  
R/o. Hukumpeta, Vizianagaram.
6. Pilla Rajannaidu S/o. Late Thatha  
Owner of Tractor AP-31-U-T/R-0999  
D.No.124,  
R/o. Chintalapeta, Gurla Mandal, Vizianagaram District.
7. ICICI Lombard General Insurance Co. Ltd., rep. by its Divil. Manager,  
Srikakulam.
8. S.K. Moullad Ali S/o. Raoul Ali  
Owner of Trailor AAS 0225, Yanam, Krishna.
9. B. Bangarappanna S/o. Adinarayana  
Owner of Trailor AAS 0225  
Pydibheemivaram, Ranasthalam Mandal,  
Srikakulam District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): A JAYANTHI**

**Counsel for the Respondents: VALLURI MOHAN SRINIVAS**

**The Court made the following: ORDER**



**HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**

**M.A.C.M.A. No.3485 of 2008 &**

**MACMA.No.3971 of 2012**

**COMMON JUDGMENT:**

1. Aggrieved by the order and decree dated 18.06.2008 in M.V.O.P. No.608 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram (for short "the tribunal"), the respondent No.6-New India Assurance Company Limited, represented by its Divisional Manager, Srikakulam, filed M.A.C.M.A. No.3485 of 2008. In contrast, the claimants have filed M.A.C.M.A. No.3971 of 2012. Both appeals are disposed of by common Judgment because they arise from the orders made in M.V.O.P. No.608 of 2005.
2. For convenience's sake, the parties will hereinafter be referred to as arrayed in the M.V.O.P.
3. It is a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V.Act') claiming compensation of Rs.12,00,000/- on account of the death of Ravva Ramarao (hereinafter refer to as 'the deceased') in a motor vehicle accident that occurred on 03.12.2004.
4. It is not in dispute that the deceased is the husband of the first Claimant and the father of claimants 2 to 4.



5. The Claimant's case is that on 03.12.2004, the deceased went to the outskirts of Nellimarla village near Railway Bridge with his cousin to answer their calls of nature at about 07.30 PM. At that time, the 1<sup>st</sup> respondent drove the tractor-trailer bearing No. A.P. 30 U T/R 0999, AAS 0225 (hereinafter referred to as 'the offending vehicle') from Ramatheertham's side in a rash and negligent manner, without blowing the horn and hit the deceased. As a result, the deceased sustained serious injuries and died on the spot. The Police of Nellimarla registered a case in Cr. No.100 of 2004 under section 304A of I.P.C. against the 1<sup>st</sup> respondent.
6. Respondents 1, 2, 4 and 5 remained ex-parte.
7. The 3<sup>rd</sup> respondent-ICICI Lombard General Insurance Company, filed counter and denied most of the petition averments, including the manner of the accident, age and income of the deceased and contended that a false case was foisted against the 1<sup>st</sup> respondent by the police due to pressure of the local political leaders. The claim is highly excessive. The claimants are put to strict proof that the offending vehicle was insured with their company and the policy was in force as of the date of the accident.



8. The 6<sup>th</sup> respondent, New India Assurance Company Limited, filed a counter and denied most of the petition averments and contended that the alleged accident occurred due to the rash and negligent driving of the tractor, even as per the allegations of the petition—the trailer bearing No.AAS 0225 was not involved in any accident nor attached to the tractor at the time of the accident. The claimants are put to strict proof that the 5<sup>th</sup> respondent insured the offending vehicle with their company and that the policy was in force on the accident date. The claim is excessive.
9. Based on the pleadings, the Tribunal framed appropriate issues. Before the Tribunal, on behalf of the claimants, PWs.1 to 4 got examined and marked Exs.A.1 to A.6 and marked Ex. X1 through PW.4. On behalf of the third respondent, RW.1 got examined and marked Ex.B1. On behalf of the 6<sup>th</sup> respondent, no oral and documentary evidence was adduced.
10. After considering the evidence on record, the Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle's driver, i.e., the first respondent; awarded compensation of Rs.6,07,300/-with interest at 6% p.a., from the date of petition till the date of realization against respondents



No.3 and 6, making them jointly and severally liable to pay the compensation.

11. Heard the arguments of the learned counsel for parties.
12. Learned counsel for the appellant/respondent No.6-Insurance company in M.A.C.M.A. No.3485 of 2008 contends that there is no rash and negligent driving as far as the trailer; the Tribunal failed to see that the owner and insurer of the trailer are not liable for any compensation; the Tribunal erred in passing the award jointly and severally; the Tribunal failed to see that if there is any accident, it might have occurred due to the rash and negligent driving on the part of the driver of the tractor and hence the owner and insurer of the tractor are only liable.
13. Learned counsel for appellants/claimants in M.A.C.M.A. No.3971 of 2012 contends that the Tribunal, though rightly held that the deceased died due to rash and negligent driving of the offending vehicle's driver, but went in wrong while awarding the compensation, the Tribunal ought to have seen that the deceased was 41 years of age as on the date of the accident. Still, the Tribunal had fixed the multiplier '12', though the multiplier '15' is applicable as per the II Schedule in view of the age of the deceased; the Tribunal ought to have seen that the deceased was working as an Attender and his monthly salary by then was



Rs.6,860/-; there was a bright chance of promotion to the next higher category and hike in the pay scale; the Tribunal ought to have taken the net income of the deceased after deducting the statutory deductions.

14. Per contra, the learned counsel for the respondents support the findings and observations of the Tribunal.

15. Now, the points that arise for consideration are:

- I. Whether the Tribunal erred in holding that the owner and insurer of the trailer are liable to pay the compensation amount?
- II. Whether the quantum of compensation fixed by the Tribunal is just and reasonable, and it requires enhancement?

**POINT NO.I:**

16. As seen from the Tribunal order, while answering issue No.1, it held that the accident took place only on account of the rash and negligent driving of the offending tractor and trailer by its driver 1<sup>st</sup> respondent; while answering the issue No.2, the Tribunal held that both the tractor and trailer ran over the deceased and caused the death of the deceased. Therefore, both the insurance companies are equally liable to pay the compensation; while answering issue No.3, the Tribunal granted compensation of Rs.6,07,300/- against all the respondents, making them jointly and severally liable to pay the compensation.



17. The Tribunal's finding that the deceased died due to injuries in the accident is not disputed. The said finding attained finality. The said case of the claimants is also established by Ex.A2-certified copy of postmortem certificate and Ex.A4-certified copy of charge sheet and Ex.A6-certified copy of inquest report.
18. The claimants case that the offending tractor was insured with the 3<sup>rd</sup> respondent and the offending trailer was insured with the 6<sup>th</sup> respondent, and the insurance policies were in force as of the date of the accident are also not in dispute. Ex.A3 M.V.I. report shows that the tractor and trailer belonging to respondents 2 and 5 which were insured by respondents 3 and 6 insurance companies, respectively, were involved in the accident.
19. To prove the manner of the accident, the claimants examined PW.1-Ravva Vijayalakshmi, the deceased's wife. Admittedly, she is not an eyewitness to the accident. She testified that the complaint was given to the police by one Chittibabu i.e., PW.2, the deceased's cousin, about the accident. Ex.A1-F.I.R was registered against the driver of the tractor-trailer i.e., 1<sup>st</sup> respondent; as per Ex.A4, the 1<sup>st</sup> respondent was charge-sheeted by police for causing the accident by driving the tractor and trailer rashly and negligently. The evidence of PW.2 shows that he accompanied the deceased on the date of the accident to



answer calls of nature. The 1<sup>st</sup> respondent drove the tractor-trailer rashly and negligently and hit the deceased. In the cross-examination, he furnished the number of the vehicle as AAS 0225 and AP 5/2372 in Ex.A1 to the police. He further stated that the tractor-trailer ran over the body of the deceased. The respondents did not place any evidence to disprove the manner of an accident as stated by the claimants. The 5<sup>th</sup> respondent, who is the owner of the trailer bearing No.AAS 0225 was examined as PW.4, who testified that he gave the trailer to his friend, i.e., the 2<sup>nd</sup> respondent, the tractor's owner. He also filed Ex.X1-C-Book relating to the trailer. He further stated that the 2<sup>nd</sup> respondent is the owner of the tractor bearing No. A.P. 30 U T/r 0999, to which the trailer was attached on the date of the accident. The said evidence of PW.4 is not seriously disputed by either party.

20. The evidence of PW.2 that the tractor and trailer ran over the deceased's body is not disputed. However, it is suggested in the cross-examination that the trailer was not attached to the tractor at the time of the accident. The suggestion to PW.2 contradicts the case as deposed by PW.4. As already referred, PW.4 testified that his trailer was involved in the accident. The counsel for the 6<sup>th</sup> respondent-insurance company suggested that the trailer was not involved in the accident. It is not the case of the 6<sup>th</sup>





respondent insurance company that its staff or employees witnessed the accident. The 6<sup>th</sup> respondent-Insurance company, has not explained its source of information regarding the manner of an accident. It has not examined any witness to disprove the manner of the accident as referred to in Ex.A4-charge sheet.

21. The respondents placed no reliable evidence to show that the contents of the charge sheet are incorrect. In the case of **Rajani and others, V. M.SatyanarayanaGoud and others**<sup>1</sup>, the Hon<sup>’</sup>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”.*

22. In the case of **Bheemla Devi V. Himachal Road Transport Corporation**<sup>2</sup>, the Hon<sup>’</sup>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”.*

23. Nothing on record suggests that the Investigating Officer filed a charge sheet against the offending tractor-trailer without conducting a proper investigation. It is also difficult to hold that the Police Officer fabricated a case against the 1<sup>st</sup> respondent.

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<sup>1</sup>2015 ACJ 797

<sup>2</sup>2009 ACJ 1725 (S.C.)



24. By assuming for convenience, the trailer did not proceed on the deceased; now, I consider whether the liability can be fixed on the 6<sup>th</sup> respondent-insurer of the trailer.
25. Admittedly, the tractor and trailer belonged to different owners but were used together to carry out activities. In order to resolve the controversy in regard to liability, it is necessary to know the definitions of tractor and trailer and their use concerning the relevant provisions of the M.V. Act 1988.
26. As per Section 2(44) of the M.V.Act, a 'tractor' means "a motor vehicle which is not itself constructed to carry any load (other than equipment used for propulsion) but excludes a road roller". By reading the definition of a 'tractor', it is clear that the tractor is not constructed to carry any load, although a tractor is a kind of 'heavy goods vehicle' as defined under Section 2(16) of the Act which reads as under:
- 'Heavy goods vehicle' means any goods carriage, the gross vehicle weight of which, or a tractor or a road roller, the unladen weight of either exceeds 12,000 kgs. It (tractor) cannot be used for carrying out any activities without the help of a trailer or other equipment.
27. As per Section 2(46) of the M.V. Act, a trailer means any vehicle other than a semi-trailer and a sidecar drawn or intended to be drawn by a motor vehicle. By reading the definition of a 'trailer', it is clear that it would not move on its own. It has to be drawn



with the help of another motor vehicle. Although a trailer is a kind of motor vehicle as per the definition of motor vehicle defined under Section 2(28) of the M.V.Act, which reads as "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for the use of the roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with an engine capacity of not exceeding (25 cubic cms.). It (trailer) cannot be used for carrying any activities without the help of another motor vehicle with the help of which it has to be drawn.

28. From the above discussion, it is clear that it is the combination of a tractor and a trailer which constitutes a full-fledged "goods carriage", which is a kind of transport vehicle as defined under Section 2(47) of the M.V.Act which reads as under :

"transport vehicle means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

29. Further, the combination of a tractor and trailer may be used as a transport vehicle for carrying on commercial activities, or it



may be used as a miscellaneous vehicle for carrying on agricultural activities, depending upon the nature of the permit and insurance policy. As both tractor and trailer are independent motor vehicles, by themselves, they have to be registered separately, however, if both the tractor and trailer belong to one and the same owner, he can either insure them together under a single policy or he can insure them separately with two different policies and the similarly either, he can insure them with the same insurance company or with other insurance companies. Therefore, the law does not contemplate whether both tractor and trailer should belong to the same person to use them for carrying on activities.

30. Section 147 of M.V.Act, deals with requirements of policies and limits of liability. Sub-clause (i) of clause (b) of sub-section (1) of section 147 of the said Act reads thus:

Requirements of policies and limits of liability. —

(1) To comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily<sup>27</sup> [injury to any person, including the owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;



31. In a reference made to the Hon'ble Divisional Bench of this Court to decide as to whether the insurance company can be fastened with the liability of a person who dies while travelling in a trailer (not insured) attached to the tractor (insured), this Court held in **United India Insurance Company Limited V. Koduru Bhagyamma and others**,<sup>3</sup> as follows:

14. Now, on analysis of these judgments and the provisions of law which have been quoted above, we feel that the law has been correctly appreciated by a learned single Judge of this Court in *Gunti Devaiah and others V. Vaka Peddi Reddy and others* and the reasons given by him are sufficient to hold that under the Motor Vehicles Act, no separate insurance is contemplated for a trailer, and when the trailer is attached to the tractor which is insured, it becomes part of the tractor. We reproduce the para-26 of the said Judgment as under,

'The word 'vehicle'? Mentioned in Section 147 is co-relatable to the word motor vehicles, which is stipulated in section 146. Therefore, the expression vehicle, wherever appearing in Chapter X (XI), has to be only read as a motor vehicle. The principle of a claim for compensation in accidents arising out of the use of the motor vehicle is based on tortious liability, and the negligence of the driver of the motor vehicle is a sine quo non for maintaining a claim under the provisions of the Act. In as much as the trailer by itself cannot be driven, it has to be carried or towed with a motor vehicle namely a tractor or a self-propelled vehicle. Therefore, the question of driving the trailer in a rash and negligent manner would not arise. It is only the prime mover or the motor vehicle which controls the movement of the tractor, and in case of the negligence driving of the trailer or the motor vehicle, the owner of the vehicle and its insurer alone will be made liable for payment of compensation. But, since the trailer is attached, can it be said that the trailer should also be independently insured to avoid the liability of compensation in case of rash and negligent driving by the driver? That contingency would not arise, as it is only a vehicle and not a motor vehicle. It may be for tax

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<sup>3</sup> 2008 (2) ALT 764 (D.B.)



purposes, but it is treated as a goods vehicle. But, under the provisions of the Motor Vehicles Act, no separate Insurance is contemplated. When the trailer is attached to the tractor, it becomes a tractor-trailer. There is no provision requiring the trailer to be separately insured to cover the third-party risk. The reasons are evident that it cannot be driven by the driver as in the case of motor vehicles or tractors. Thus, a separate distinction has been drawn between the motor vehicle and a vehicle, i.e., visible in all the definitions and more especially in Chapter XI. The same situation also persists in Chapter-X in the case of no-fault liability wherein it has been stated that whether death or a permanent disability of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles and there is no reference to the vehicle as such.

32. In the instant case, as observed above, the tractor belongs to respondent No.2, and the trailer belongs to respondent No.5. The tractor was insured with respondent No.3, and the trailer was insured with respondent No.6. As already observed in preceding paragraphs, both tractor and trailer were involved in the accident. In light of the legal position stated above, this Court views that even if assumed that the trailer is not involved in the accident, the insurer is liable to pay the compensation amount.
33. Even in a case, if the tractor draws a trailer, such as a tractor-trailer, causes the accident, then the vehicle causing the accident would not be a tractor but a goods vehicle. The tractor-trailer cannot be considered a separate vehicle. In a case where the driver of the tractor was rash and negligent in driving the tractor attached to the trailer, as the deceased was a third party along with the owners and driver, the insurance companies were also



vicariously liable, irrespective of the fact, whether the victim suffered the injury with the tractor or with the trailer. This Court views a trailer attached to a motor vehicle as a part of the motor vehicle itself. In subsection (28), (44) and (46) of Section 2 of the Act are read together, it becomes clear that the trailer becomes a part of the motorcycle when it is drawn by a motor vehicle because subsection (28) of Section 2 of motor vehicle Act, makes a special reference to a trailer and trailer cannot be moved on roads except by propulsion transmitted thereto from a motor vehicle.

34. When a tractor and a trailer belonging to different owners are used together for any activities, and during such use, if an accident occurs, owners and insurers of both the tractor and trailer are jointly and severally liable to answer the claim.
35. After considering the evidence on record, this Court also views that the oral and documentary evidence adduced on behalf of the claimants and respondents clearly show that the deceased sustained injuries and died due to the negligent acts of the driver of the tractor-trailer and the trailer was also involved in the accident. Therefore, I do not see any reason to interfere with the finding of the Tribunal. Accordingly, this point is answered.



**POINT No.II:**

36. It is not in dispute that the deceased worked as Attender at P.H.C., Nellimarla. To establish the earnings of the deceased, the claimants got examined K. Prasanna Kumari, Senior Assistant in Primary Health Center, Nellimarla, as PW.3. She testified that the deceased worked as Attender in their office till his death and further noted that the gross salary of the deceased was Rs.6,860/- for November 2004 as per Ex.A5 certificate issued by their office. The 3<sup>rd</sup> respondent-Insurance company has summoned RW.1 who is working as Deputy Civil Surgeon in Primary Health Center, Nellimarla. He brought the service register of the deceased and stated that the last pay of the deceased was Rs.6,845/- towards gross salary. He further noted that the deceased joined their department as Attender on 14.10.1992, and the pay was revised on 01.10.2004. Ex.A.5-Salary certificate shows that the deceased was getting an amount of Rs.6,860/- per month. Out of the said amount, it seems that the deceased was paying Rs.500/-towards GPF Subscription, Rs.150/- towards A.P.G.L.I., Rs.15/- towards G.I.S. and Rs.20/- towards P.T. After excluding the deductions, the net salary of the deceased can be considered as Rs.6,700/-.





37. In the decision reported in **National Insurance Co., Ltd., rep. by its Branch Manager, Adilabad Vs. Mitapalli Sundaramma and others**<sup>4</sup>, it is clearly held that in arriving at the net salary, only standard deductions have to be deducted from the gross salary, but not the amounts paid towards loans etc.
38. Upon considering the evidence of PW.3 and relying on Ex.A5, this Court considers the monthly earnings of the deceased at Rs.6,700/-. Ex.A2 postmortem certificate and contents of the petition show the deceased's age as '41' years. There is no serious dispute regarding age. Hence, this Court is inclined to consider Ex.A2 postmortem certificate regarding the deceased's age. In so far as the future prospects are concerned, the Apex Court, in **National Insurance Company Ltd. vs Pranay Sethi**<sup>5</sup>, at paragraph 61, held that,

*(iii) While determining the income, an addition of 50% of the actual salary to the deceased's income towards prospects, where the deceased had a permanent job and was below 40, should be made. The addition should be 30% if the deceased is between 40 to 50 years. If the deceased was between 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

*(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*

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<sup>4</sup> 2006 (6) ALT 214

<sup>5</sup> (2017) 16 SCC 680



*established income means the income minus the tax component.*

39. In this case, the deceased had a permanent job, and as such, this Court views that an additional 30% of the established income should be warranted towards future prospects. The monthly earnings, including prospects, arrive at Rs.8,710/- (Rs.6,700/- + Rs.6,700/- (x) 30%). Following the same, the annual earnings of the deceased, including a future prospectus, can be assessed at Rs.1,04,520/- (Rs.8,710 x 12).
40. Out of which, where the deceased is a married person and the dependants are 4 in number,  $1/4^{\text{th}}$  of the personal and living expenses of the deceased should be made, i.e. Rs.26,130/- (Rs.1,04,520/- x  $1/4$ ), and thereby, the contribution of the earnings of the deceased towards the family members would arrive at an amount of Rs.78,390/- {Rs.1,04,520/- (-) Rs.26,130/-}. To arrive at the loss of earnings, the appropriate multiplier '14' for the age groups of 41 to 45 as specified by the Apex Court in **Sarla Verma v. Delhi Transport Corporation**<sup>6</sup> is applied and arrives at the loss of dependency at Rs.10,97,460/- (Rs.78,390/- x 14).
41. Insofar as the conventional heads are concerned, in **Pranay Sethi's** case referred to supra, the Apex Court awarded a total sum of Rs.70,000/- under conventional heads, namely, loss of

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<sup>6</sup>2009 ACJ 1298



estate, loss of consortium, and funeral expenses. It was further held that the sum should be enhanced at 10% every three years.

It was held thus in Paragraph 61:

*"(viii) Reasonable figures under conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Res.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

42. In **Magma General Ins. Co. Ltd., v. Nanu Ram**<sup>7</sup>, at paragraph 8, the Apex Court held that:

*"(8.6)...the Motor Vehicles Act is beneficial and welfare legislation. The Court is duty-bound and entitled to award 'just compensation, irrespective of whether any plea on that behalf was raised by the Claimant.*

*(8.7) A Constitution Bench of this Court in Pranay Sethi, 2017 ACJ 2700 (S.C.), dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is the loss of consortium.*

*In legal parlance, 'consortium' is a compendious term which encompasses 'spousal consortium', parental consortium', and filial consortium.*

*The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh v. Rajbir Singh 2013 ACJ 1403 (S.C.).*

*The parental consortium is granted to the child upon the premature death of a parent, for loss of 'parental aid, protection, affection, society, discipline, guidance and training.*

*The filial consortium is the right of the parents to compensate in the case of the accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit."*

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<sup>7</sup>2018 ACJ 2782



43. The Judgment in **Pranay Sethi's** case was rendered in the year 2017. Therefore, the claimants are entitled to a 10% enhancement of conventional heads.

44. In all, the claimants, i.e., the wife and children of the deceased, are entitled to the compensation as detailed below:

Towards loss of dependency	Rs.10,97,460/-
Towards funeral expenses	Rs. 16,500/-
Towards loss of estate	Rs. 16,500/-
Towards spousal consortium	Rs. 44,000/-
Towards parental consortium	Rs. 1,32,000/-
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Total:	Rs. 13,06,460/-
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45. In **Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and another**<sup>8</sup> the Apex Court while referring to **Nagappa v. Gurudayal Singh**<sup>9</sup> 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.”*

46. In **Ramla vs National Insurance Co. Ltd.**,<sup>10</sup> 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 claimants are entitled to Rs.13,06,460/- exceeding the

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<sup>8</sup> (2011) 10 SCC 756

<sup>9</sup> 2003 A.C.J. 12 (SC) 274

<sup>10</sup> CIVIL APPEAL No.11495 OF 2018



- claimed amount. However, the claimants shall pay the requisite court fee over and above the compensation awarded.
47. Following the principles laid down by the Apex Court in a catena of judgments, this Court can safely conclude that the claimants are 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 claimants is a paramount consideration. The Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.
48. After considering the material on record, this Court holds that the claimants are entitled to Rs.13,06,460/- with interest at 6% per annum. Given the discussion above in the appeal, this Court warranted interference with the impugned order and allowed the claim petition. Accordingly, this point is answered.
49. As a result, the appeal in M.A.C.M.A. No.3485 of 2008 filed by respondent No.6-New India Assurance Company Limited, Srikakulam, is dismissed. The appeal in M.A.C.M.A. No.3971 of 2012 filed by claimants is partly allowed, enhancing the compensation from an amount of Rs.6,07,300/- to an amount of Rs.13,06,460/- (Rupees Thirteen Lakhs Six Thousand Four Hundred and Sixty only), with interest at 6% per annum as awarded by the Tribunal. The claimants shall pay the requisite



court fee on the enhanced compensation amount. Respondents 3 and 6 are directed to deposit the enhanced compensation amount, excluding the amount deposited within two months of receiving a copy of this order. Out of the enhanced compensation amount, the first Claimant is entitled to 55% of the enhanced compensation with accrued interest; the Claimants 2 to 4 are entitled to 15% each of the enhanced compensation amounts with accrued interest. On such deposit, the claimants are permitted to withdraw their respective shares on filing appropriate applications before the Tribunal. It is made clear that claimants 2 to 4, who are shown to be minors, are entitled to enhanced compensation only after the attainment of their majority. The apportionment made by the Tribunal regarding the compensation awarded by it is not disturbed. Both parties shall bear their costs.

50. Consequently, miscellaneous petitions pending, if any, shall stand closed.

**Date: 16.03.2023**  
**SAK**

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**T. MALLIKARJUNA RAO, J**



M.A.C.M.A. No.3485 of 2008 &  
M.A.C.M.A. No.3791 of 2012 **APHC:11697**

**HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

**M.A.C.M.A. No.3485 of 2008 &**

**MACMA.No.3971 OF 2012**

Date: 16.03.2023

SAK