HIGH COURT OF ANDHRA PRADESH

MONDAY ,THE THIRD DAY OF JULY

TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE DUPPALA VENKATA RAMANA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3768 OF 2011

Between:

1. INAGANTI PRAKASA RAO amp ANOTHER S/o. Singaiah,
   Coolie,
   R/o. S.C. Colony, Patamagulur (Village),
   Santamagulur (Mandal) Prakasam District.
2. Inaganti Sowbhagyavathi, W/o. NiagantiPrakasa rao,
   Coolie
   R/o. S.C. Colony, Patamagulur (Village),
   Santamagulur (Mandal) Prakasam District.

...PETITIONER(S)

AND:

1. KANDUKURI MARIYA BABU & 2 OTHERS S/o. Yacobu,
   Auto Driver,
   R/o. Uppalapadu (V), Narasaraopet Mandal, Guntur Dist.,
3. Thanneru Lavakumar, S/o. China Kotaiah,
   Owner of Auto AP-07/TV-7112,
   R/o. Uppalapadu (V), Narasaraopet Mandal,
   Guntur District.
4. Bajaj Allianz General Insurance Company Ltd., Rep. by its Branch Manager,
   GNR Complex, Opp: Rajamathadevi Towers,
   Santhapet, Trunk Road, Ongole.

...RESPONDENTS

Counsel for the Petitioner(s): HRUDAYA RAJU VALVAPURAPU

Counsel for the Respondents: T MAHENDER RAO

The Court made the following: ORDER

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

+ M.A.C.M.A.No. 3768 of 2011

% 03.07.2023

Between:

1. Inaganti Prakasa Rao, S/o Singaiah,
   Age: 39 years, Hindu, Occ: Coolie
   R/o. S.C.Colony, Patamagulur Village,
   Santamagulur Mandal, Prakasam District.
2. Inaganti Sowbhagyavathi, W/o. Inaganti Prakasa Rao,
   Age: 36 years, Occ:Coolie, R/o.S.C.Colony,
   Patamagulur Village, Santamagulur Mandal,
   Prakasam District. ... Appellants

And

1. Kandukuri Mariya Babu,
   S/o.Yacobu, Hindu,
   Aged about 30 years,
   Auto Driver,
   R/o. Uppalapadu (V), Narasaraopet Mandal,
   Guntur District.
2. Thanneru Lavakumar, S/o.China Kotaiah,
   Hindu, aged about 30 years, Owner of Auto AP-07/TV-7112
   R/o.Uppalapadu (V) Narasaraopet Mandal,
   Guntur District.
3. Bajaj Allianz General Insurance Company Ltd.,
   Rep. by its Branch Manager, GNR Complex,
   Opp.Rajamathadevi Towers, Santhapet, Trunk Road,
   Ongole. ... Respondents

DATE OF JUDGMENT PRONOUNCED**: 03.07.2023**

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**

+ M.A.C.M.A.No.3768 of 2011

% 03.07.2023

Between:

1. Inaganti Prakasa Rao, S/o Singaiah,
   Age: 39 years, Hindu, Occ: Coolie
   R/o. S.C.Colony, Patamagulur Village,
   Santamagulur Mandal, Prakasam District.
2. Inaganti Sowbhagyavathi, W/o. Inaganti Prakasa Rao,
   Age: 36 years, Occ:Coolie, R/o.S.C.Colony,
   Patamagulur Village, Santamagulur Mandal,
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And

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   S/o.Yacobu, Hindu,
   Aged about 30 years,
   Auto Driver,
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   Guntur District.
2. Thanneru Lavakumar, S/o.China Kotaiah,
   Hindu, aged about 30 years, Owner of Auto AP-07/TV-7112
   R/o.Uppalapadu (V) Narasaraopet Mandal,
   Guntur District.
3. Bajaj Allianz General Insurance Company Ltd.,
   Rep. by its Branch Manager, GNR Complex,
   Opp.Rajamathadevi Towers, Santhapet, Trunk Road,
   Ongole. ... Respondents

! Counsel for Appellants : Sri D.Bujji Babu

^ Counsel for 3rd Respondent : Sri Naresh Byrapaneni

< Gist:

> Head Note:

? Cases referred:

1. 2009 ACJ 1298 (SC)
2. (2017) 14 SCC 663
3. (2011) 13 SCC 236

4. 2014(2) SCC 735
5. 2020 SCC Online Ker 3180
6. 2017 ACJ 2700 (SC)
7. 2018 ACJ 2782 (SC)
8. (2003) 2 SCC 274
9. 2019 ACJ 559 (SC)

This Court made the following:

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No.3768 of 2011

JUDGMENT:

The appellants/claimants are before this Court seeking intervention in the impugned judgment and award dated 21.03.2011 passed in M.V.O.P.No.106 of 2010 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole, (for short "the Tribunal") awarding compensation of Rs.1,54,500/- in their favour against the Respondents 1 and 2 jointly and severally and dismissing the claim against the 3rd respondent/Insurance Company.

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

3. Heard Sri D.Bujji Babu, learned counsel for the appellants and Sri Naresh Byrapaneni, learned standing counsel for the insurance company.

4. The brief facts of the case are that Claimant No.1 is the father and Claimant No.2 is the mother of the deceased-Inaganti Chinnammai @ Chinna. It is contended by the claimants before the Tribunal that the deceased was aged about 18 years and was working as a coolie and earning Rs.4,000/- per month. On the fateful day i.e., on 13.02.2010 at 9.00 a.m., while the

deceased was returning with a milk packet from the milk centre to her house at Paathamagulur Village, on the way at about 9.30 a.m., the 1st respondent as the driver of the auto bearing No. AP-07/TV-7112 (hereinafter referred to as "the Crime Vehicle") drove the same in a rash and negligent manner and hit the deceased on her back, as a result, she sustained fatal injuries and died on the spot.

(ii) The matter was reported to the Police alleging that the accident took place as a result of the rash and negligent driving of the Crime Vehicle and based on the complaint lodged by P.Venkateswarlu, V.R.O of Santhamaguluru Village, a case in Crime No.15 of 2010 of Santhamaguluru Police Station was registered against the 1st respondent (driver) for the offence under Section 304-A IPC and after investigation of the case, a charge sheet was submitted against the accused-driver for having committed the offence punishable under Section 304-A IPC.

(iii) The deceased was unmarried and was aged about 14 years at the time of the accident. The parents of the deceased i.e., 1st and 2nd claimants filed an application claiming compensation of Rs.4,00,000/- before the learned Tribunal on account of her death in the said road traffic accident.

(iv) The 1st & 2nd respondents did not contest the matter.

(v) The 3rd respondent filed a written statement denying the age, income of the deceased and mode of the accident and contended *inter alia* that the 1st respondent, who was the driver of the crime vehicle was not having a valid driving licence to drive the same and that the offending vehicle was having effective permit and valid insurance policy and the petitioners are put to strict proof of the same. It is further averred that the claim of the petitioners is excessive and they are not entitled to claim the interest @ 12% per annum and pray to dismiss the petition.

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

(1) Whether the death of the deceased Inaganti Chinnammai @ Chinna D/o.Prakasa Rao, S.C.Colony, Pathamagulur village, Santhanuthalapadu Mandal is occurred on 13.2.2010 at 9.30 a.m. near Pathamagulur on Vinukonda-Narasaraopet road due to rash and negligent driving of the auto bearing No.AP-07/TV-7112 by its driver?

(2) Whether the petitioners are entitled to claim any compensation? and If so, to what amount and against whom?

(3) To what relief?

(vii) In order to establish the claim of the petitioners, at the time of enquiry, the 1st petitioner/1st claimant was examined

as P.W.1 and marked as many as six documents i.e., Exs.A.1 to A.6 on their behalf. One G.Chandra Sekhar, who was the Junior Legal Executive of the 3rd respondent/Insurance Company, was examined as R.W.1 and marked as many as four documents i.e., Exs.B.1 to B.4 on behalf of the 3rd respondent before the Tribunal.

(viii) On appreciation of the evidence, the following compensation was awarded by the Tribunal applying the multiplier of '15'.

S.No.	Head of Compensation	Amount of Compensation awarded in Rs.
1	Compensation	1,50,000/-
2	Funeral Expenses	2,000/-
3	Loss of Estate	2,500/-
Total		1,54,500/-

(ix) Being dissatisfied, the appellants/claimants have knocked the doors of this Court by filing this appeal against the Award dated 21.03.2011.

5. Learned counsel for the appellants/claimants would submit that the crime vehicle was insured with the 3rd respondent and the said policy was in force from 29.08.2009 to 28.08.2010. It is further submitted that six years prior to the accident, the deceased was studying 8th class, as such, by the

date of the accident, the deceased crossed the age of 18 years. It is further submitted that, considering the evidence on record, the Tribunal ought to have awarded higher compensation. It is further submitted that the driver of the offending vehicle was holding a driving licence to drive the Light Motor Vehicle, and he can also drive the transport vehicle of such class without any endorsement to that effect and therefore, the Insurance Company is liable to pay the compensation. But, the learned Tribunal had committed an error while exonerating the Insurance Company from its liability instead of directing the Insurance Company the pay the compensation since the insurance policy was in force. He would further submit that the Tribunal has not awarded the compensation in accordance with the judgment of the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation**[1]. Further, he would submit that the fixation of the liability only against the 1st and 2nd respondents, is bound to be interfered by this Court, for the reasons stated above, instead of exonerating the Insurance Company. As such, this Court may be ordered to pay the compensation amount by Respondents 1 to 3 jointly and severally. He would further submit that the figures and

[1] *2009 ACJ 1298 (SC)*

multiplier applied by the Tribunal were not justified and warrant interference of this Court by enhancing the compensation.

6. Learned Standing Counsel for the Insurance Company would submit that since the driver was not holding a valid driving licence to drive the transport auto, the Insurance Company is not liable to pay the compensation. He would further submit that the Tribunal has passed a reasoned order by exonerating the Insurance Company and directed the 1st and 2nd respondents (driver and owner of the crime vehicle) to pay the compensation. Hence, the order of the Tribunal has not suffered from any illegality or infirmity and needs no interference of this Court and the appeal is liable to be dismissed by confirming the order of the Tribunal.

7. In the light of the above rival arguments, the point for determination in this appeal is:

> *Whether the compensation awarded by the Tribunal is just and proper and whether the judgment and award passed by the Tribunal do not suffer from any illegality or infirmity which may call for interference of this Court?*

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

POINT:

9. A perusal of the impugned judgment and award would show that the learned Tribunal has framed Issue No.1 as to whether the accident took place due to rash and negligent driving of the driver of the auto bearing No. AP-07/TV-7112 and caused the death of the deceased, to which the Tribunal, after scanning the evidence of P.W.1 coupled with the documentary evidence, had given a finding in its Judgment at Para No.8 that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Therefore, I see no reason to interfere with the findings of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending auto.

10. In the present case, it is an undisputed fact that the accident had taken place on 13.02.2010 at 9.30 a.m., while the deceased was returning from the milk centre to her house at Pathamagulur Village, the 1st respondent being the driver of the auto bearing No.AP-07/TV-7112 drove the same in a rash and negligent manner at a high speed and hit the deceased on her back, as a result, she sustained injuries and died on the spot.

11. The learned counsel for the 3rd respondent/Insurance Company contended that the driver of the crime vehicle was not

holding a valid and effective driving licence to drive the same at the time of the accident. R.W.1 produced Ex.B.2-copy of the driving licence which indicates that he was permitted to drive a Light Motor Vehicle. However, he was not holding any driving licence to drive the transport vehicle. Therefore, the Insurer is not liable to pay the compensation. At this juncture, it is relevant to refer to the judgment of the Hon'ble Apex Court in **Mukund Dewangan Vs. Oriental Insurance Company Limited**[2] wherein, more particularly, in Paragraphs 43, 45 and 46, it was held as follows:

> *43. Section 10(2) (a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to*

[2] (2017) 14 SCC 663

have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

44. .....

45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private

use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to

(h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor

> *vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.*
>
> *(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.*

12. The above decision of the Hon'ble Supreme Court makes it clear that the transport vehicle defined under Section 10(2) (e) of the M.V.Act, if it is driven by a licence holder holding licence to drive the light motor vehicle, no separate endorsement needs to be obtained, when the vehicle falls in any of the particular classes of Section 10(2) and it does not exclude transport vehicle from the purview of Section 10(2) (d) and Section (21) of the Act i.e., the light motor vehicle. It is also made clear that if a driver is holding a licence to drive a light motor vehicle, he can drive a

transport vehicle of such class, without any endorsement to that effect.

13. In view of this settled proposition of law, I do not find any reason to hold that the driver in question was not holding a valid and effective driving licence to drive the crime vehicle. When such contention taken by the 3rd respondent/Insurer cannot be accepted, the Insurance Company cannot avoid the liability. Even according to Ex.A.5/Attested Copy of the M.V.I.Report at Column No.5 i.e., Vehicle involved in the accident (with a brief description of the type, make and mode of the vehicle or vehicles with their registration number), the Motor Vehicle Inspector filled the Column No.5 as "New Motor Cabs –LMV (Light Motor Vehicle) hard top type body...". It clearly indicates that the person, holding a licence of Light Motor Vehicle is entitled to drive the crime vehicle. According to Ex.B.1/Copy of Policy, the crime vehicle was meant for carrying passengers upto six persons. The crime vehicle is not at all a transport vehicle and it is only a Light Motor Vehicle as described in Ex.A.5/MVI Report. Therefore, I do not find any reason to hold that the driver in question was not holding a valid and effective driving licence to drive the crime vehicle, at the time of the accident. Accordingly, in the facts of this case and looking into the beneficial purpose

of the enactment of the Motor Vehicles Act, the Insurance Company cannot avoid its liability and is liable to pay the compensation.

14. Therefore, the learned Tribunal has committed an error in awarding compensation against the 1st and 2nd respondents by exonerating the 3rd respondent/Insurance Company from its liability, which is not proper. In view of the principles laid down in *Mukund Dewangan's case (supra),* the Insurance Company is liable to pay the compensation, which would serve the ends of justice.

15. The Tribunal having regard to the oral and documentary evidence, awarded compensation of Rs.1,54,500/- with costs and interest @ 6% per annum from the date of petition till realization, against the 1st and 2nd respondents. As already stated, the Insurance Company cannot be exempted from its liability since the driver of the crime vehicle was possessing a valid driving licence on the date of the accident and as he was having a licence to drive L.M.V and auto rickshaw, he can drive the transport vehicle of such class without any endorsement to that effect, however, the offending vehicle bearing No.AP-07/TV-7112 is a passenger auto. Therefore, it cannot be said that the offending vehicle is a transport vehicle. The learned Tribunal

has committed an error in exonerating the 3rd respondent/Insurance Company from its liability, which is not justified.

16. The claimants are claiming that the deceased was aged about 18 years and was working as a coolie and earning Rs.4,000/- per month, by the date of the accident. But, the learned Tribunal held that the claimants did not produce the school record in proof of her date of birth. Further, the learned Tribunal observed that, as per the II Schedule of the Motor Vehicles Act, for non-earning persons, the notional income has to be taken at Rs.15,000/- per annum. Therefore, the Tribunal held that the deceased was earning Rs.15,000/- per annum on an average.

17. The learned Tribunal committed an error while assessing the income of the deceased. Even if she is a labourer/coolie, at least she may get Rs.150/- per day. Therefore, this Court is of the view that the deceased-I.Chinnammai can be treated as a labourer/coolie and the same is pleaded in the claim petition. Her monthly income as on the date of the accident i.e., 13.02.2010 can be taken into consideration, by following the Hon'ble Apex Court's judgment in ***Ramachandrappa Vs.***

Manager, Royal Sundaram Alliance Insurance Company Limited,[3] 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 Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz., in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. 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 Rs.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 Rs.100/- to Rs.150/- per day or Rs.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 Rs.4500/- to Rs.3000/- per month. We,*

[3] (2011) 13 SCC 236

therefore, accept his statement that his monthly earning was Rs.4500/-"

18. Following the parameters laid down by the Hon'ble Supreme Court in *Ramachandrappa's case (supra),* the notional income of the labourer/coolie can be taken @ Rs.4,500/- per month, on the ground that the wages of a labourer during the relevant period in the year 2004 were in between Rs.100/- to Rs.150/- per day or Rs.3,000/- to Rs.4,500/- per month.

19. In an another judgment of the Hon'ble Apex Court in **Syed Sadiq & Others Vs. Divisional Manager, United India Insurance Company Limited,**[4] their lordships observed, at Para No.9, as follows:

"9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."

20. Another decision reported in **Soman Vs. Jinesh James**[5] wherein Kerala High Court, at Para No.5, held as follows:

"5. The Tribunal assessed the income of the appellant, who asserted to be a coolie, at Rs.3000/- in the year 2010. A coolie was fixed with a notional income of Rs.4,500/- per month in the year 2004, in

[4] 2014 (2) SCC 735
[5] 2020 SCC Online Ker 3180

Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]. The Hon'ble Supreme Court has also recognized the principle that there would be incremental enhancement in the case of even self-employed individuals in the un-organized sector (National Insurance Co. Ltd. vs. Pranay Sethi (2017) 16 SCC 680) and with respect to an unspecified job of a coolie considering the increase in cost of living and economic advancements over the years, it can be safely assumed that even a coolie would be eligible for incremental addition of at least Rs.500/- in every subsequent year. In such circumstances, the appellant who is a coolie, is entitled to be fixed with a notional income of Rs.7500/- as on the year of accident, which is 2010....."

21. Though the appellants/claimants have claimed compensation of Rs.4,00,000/-, keeping in view of the object of the Motor Vehicles Act, 1988 which is a beneficial and a welfare legislation, in the light of the judgments cited supra, regarding the payment of just and reasonable compensation rendered. The appellants/claimants had pleaded that the deceased was a labourer/coolie and was earning Rs.4,000/- per month, but, the Tribunal arrived at a finding that the deceased was only getting a notional income of Rs.1,250/- per month or Rs.15,000/- per annum.

22. In *Ramachandrappa's case (supra) and in Syed Sadiq's case (supra),* the Hon'ble Supreme Court has fixed the notional income of a coolie worker in the year 2004 at the rate of Rs.4,500/- per month and that of a vegetable vendor at the rate of Rs.6,500/- per month in the year 2006. In *Soman's case (supra),* High Court of Kerala has fixed the notional income of a coolie worker in the year 2010 at Rs.7,500/- per month.

23. Following the parameters laid down by the Hon'ble Supreme Court in the afore-cited decisions, this Court is of the view that the claimants who claimed that the deceased was a labourer and the accident having occurred in the year 2010, the notional income of the deceased can safely be re-fixed at Rs.6,000/- per month. Accordingly, this Court is of the view to re-fix the notional income of the deceased at Rs.6,000/- per month, which is justified. Therefore, there is no reason for the Tribunal to determine the monthly income of the deceased at Rs.1,250/- and annual income at Rs.15,000/-, contrary to the Hon'ble Apex Court's judgments (supra).

24. In the instant case, the deceased was aged about 18 years, as mentioned in Exs.A.1 to A.4. The 3rd respondent/Insurance Company has not taken any steps to call for the records from the school or to examine any of the school authorities to

determine the age of the deceased. Therefore, this Court is of the view that the age of the deceased may be taken as '18' years, at the time of the accident.

25. To grant compensation under various heads, now it is necessary to refer to the decision in *Sarla Verma's* case *(supra)* wherein, at Para-18, it was held as follows:

> *"18. 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."*

26. Since the deceased was a labourer and she was between the age group of 15–20 years by the date of the accident, the appropriate multiplier would be '18' in view of the guidelines laid down in *Sarla Verma's (supra)* wherein the loss of dependency was thus re-assessed at para-42 of the decision, which reads as under:

> *"42. 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."

27. In the instant case, evidently, the deceased was survived by her parents, who are the appellants/claimants. Therefore, the number of her dependent family members is 'two'. According to *Sarla Verma's* case (*supra*), 50% of the income of the deceased should be deducted towards her personal and living expenses. On this aspect, the observation of the Hon'ble Apex Court in *Sarla Verma's* case (*supra)*, at paras-30, 31 and 32, is as under:

"30. 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.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, ***50% is deducted as personal and living expenses****, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.*

> *32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third".*

28. In the instant case, the deceased was unmarried by the date of the accident and 1st and 2nd petitioners/claimants are her parents. In view of the decision in *Sarla Verma (supra),* 50% of the income of the deceased has to be deducted towards her personal and living expenses. 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.6,000/-, the annual income would be worked out to Rs.72,000/- (Rs.6,000/- x 12 = Rs.72,000/-). 50% of the said amount would be arrived at Rs.36,000/- (Rs.72,000 x 50% =Rs.36,000/-). After deducting the same towards her personal and living expenses, the annual income of the deceased would be arrived at Rs.36,000/- (Rs.72,000/- (-) Rs.36,000/- =Rs.36,000/-).

29. As the deceased was found to be '18' years old at the time of the accident, the appropriate multiplier applicable would be

'18' instead of '15' in view of the principles laid down in *Sarla Verma*'s case (supra). Having applied the said principles and the multiplier, the loss of dependency would be worked out to Rs.6,48,000/-(Rs.36,000/- x 18 = Rs.6,48,000/-). This Court finds that the Tribunal has committed an error while awarding compensation under the head of 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.

30. In the instant case, the claimants are entitled to the compensation under conventional heads viz., loss of estate, loss of consortium and funeral expenses, in view of the principles laid down in **National Insurance Company Vs. Pranay Sethi**[6] and in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram and others***[7].

Funeral Expenses:

31. Under this conventional head the Tribunal wrongly awarded a sum of Rs.2,000/- towards funeral expenses. The

[6] 2017 ACJ 2700 (SC)
[7] 2018 ACJ 2782 (SC)

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:

32. Under this conventional head the Tribunal wrongly awarded a sum of Rs.2,500/- towards loss of estate. The same is enhanced from Rs.2,500/- to Rs.15,000/- (as per the decision of the Constitution Bench in *Pranay Sethi's* case).

Loss of Consortium:

33. Besides the above heads, the mother and father of the deceased i.e., 1st & 2nd petitioners are entitled to be awarded a sum of Rs.40,000/- each, towards loss of consortium under the head of 'Filial Consortium' as was held by the Hon'ble Supreme Court in *Magma Case (supra).*

34. 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."*

35. On an overall re-appreciation of the pleadings, material on record and the law laid down by the Hon'ble Supreme Court in

the afore-cited decisions, I am of the definite opinion that the appellants/claimants are entitled to enhancement of compensation as modified and recalculated above and given in the table below for easy reference.

S.No.	Heads of Compensation	Amount of compensation awarded in Rs.
1	Loss of Dependency	6,48,000.00 (6,000 x 12 = 72,000/- x 50% x 18 = 6,48,000/-)
2	Loss of Estate	15,000.00
3	Funeral Expenses	15,000.00
4	Loss of Consortium to the 1st & 2nd appellants/1st & 2nd petitioners (Rs.40,000/- each)	80,000.00
	Total	**7,58,000.00**
	(-) Compensation awarded By the Tribunal	1,54,500.00
	Enhanced amount	6,03,500.00

36. As per the decision of the Hon'ble Supreme Court of India in the case of ***Nagappa Vs. Gurudayal Singh and others***[8], under the provisions of the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal /Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an

[8] (2003) 2 SCC 274

award. Therefore, the claimants are entitled to get more compensation than claimed, but the Tribunal did not pass such award. There is no embargo to award compensation more than that claimed by the claimant. Rather, it is obligatory for the Tribunal and Court to award "just compensation", even if it is in the excess of the amount claimed. The Tribunals are expected to make an award by determining the amount of compensation which should appear to be just and proper. In the present case, the compensation as awarded by the Claims Tribunal against the background of the facts and circumstances of the case, is not just and reasonable and the claimants are entitled to more compensation than the amount awarded, though they might not have claimed the same at the time of filing of the claim petition.

37. Therefore, in view of the foregoing discussion and following the principles laid down by the Hon'ble Apex court in the Judgments *supra,* this Court is of the opinion that the award passed by the Tribunal warrants interference and thereby, enhanced the compensation from Rs.1,54,500/- to Rs.7,58,000/-.

38. **Resultantly**, the appeal is allowed with costs and the compensation amount is enhanced from Rs.1,54,500/- to Rs.7,58,000/- along with interest @ 7.5% per annum from the

date of filing of the claim petition till the date of realization, against the Respondents 1 to 3 jointly and severally.

(ii) Respondents 1 to 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 appellants/claimants are directed to pay the requisite Court-fee in respect of the enhanced amount awarded over and above the compensation claimed (As per the judgment of Hon'ble Apex Court in **Ramla Vs. National Insurance Company Limited[9])**.

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

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[9] 2019 ACJ 559 (SC)

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

JUSTICE DUPPALA VENKATA RAMANA

03.07.2023
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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

M.A.C.M.A.No.3768 of 2011

03.07.2023

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