***HON'BLE SRI JUSTICE RAVI NATH TILHARI**
AND
***HON'BLE DR. JUSTICE K. MANMADHA RAO**

+M.A.C.M.A. No.945 OF 2013

%04.08.2023

#M/s. The National Insurance
Company Ltd.,
Rep. by its Branch Manager,
Seshapiran street,
Chittoor.

……Appellant/Respondent No.2

And:

$1. E. Suseelamma,

….Respondents/Petitioners.

!Counsel for the appellant : Sri N. Rama Krishna
^Counsel for the respondents : Sri S. V. Muni Reddy,
learned counsel for the
respondent Nos. 1 to 3.

<Gist:
>Head Note:
? Cases referred:

1. (2007) 4 ALT 662 : (2007) 1 ALD 708
2. (2001) 1 SCC 171
3. (2013) 10 SCC 646
4. (2009) 14 SCC 71
5. (2015) 9 SCC 273
6. (2014) 3 SCC 590
7. (1999) 1 SCC 90

8. (2003) 2 SCC 274
9. (2021) 2 SCC 166
10. (2013) 11 SCC 517
11. AIR 1963 SC 1516
12. (1994) 2 SCC 41
13. (2010) 10 SCC 458
14. (2009) 6 SCC 121
15. (2018) 18 SCC 130
16. (2015) 1 SCC 539
17. (2021) 6 SCC 188
18. (2021) 2 SCC 166

HIGH COURT OF ANDHRA PRADESH

M.A.C.M.A. No.945 OF 2013

%04.08.2023

M/s. The National Insurance
Company Ltd.,
Rep. by its Branch Manager,
Seshapiran street,
Chittoor.

……Appellant/Respondent No.2

And:

1. E. Suseelamma,

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DATE OF JUDGMENT PRONOUNCED: 04.08.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE DR. JUSTICE K. MANMADHA RAO

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

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

3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

_____

Dr. K. MANMADHA RAO, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE DR. JUSTICE K. MANMADHA RAO

M.A.C.M.A No.945 OF 2013

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri N. Rama Krishna, learned counsel for the appellant/Insurance Company and Sri S. V. Muni Reddy, learned counsel for the claimants, present respondent Nos. 1 to 3.

2. M.A.C.M.A.No. 945 of 2013 is by the National Insurance Company Limited represented by its Branch Manager, Seshapiran Street, Chittoor. Challenging the judgment/award dated 08.01.2013 passed in M.V.O.P.No.231 of 2009 filed by the claimants/respondents 1 to 3 which was partly allowed by the I Additional District - Cum - Chairman, Motor Accidents Claims Tribunal, Chittoor (in short, the Tribunal).

3. Briefly stated the facts of the case are that V. Jayachandra Naidu, along with his friend Sathyanarayana was proceeding in his Maruti Car bearing Registration No. AP03 K 4752 from Chittoor to Palamaner on 01.08.2009. He was driving the car and when it reached near Buthala Banda cross, a Gas Tanker lorry bearing Registration No. A.P.31 T 9427 belonging to V. Madhavan, the respondent No.1 in M.V.O.P.

case dashed against Maruti Car causing death of V. Jayachandra Naidu and Sathyanarayana.

4. The claimants, on account of death of Sathyanarayana, filed M.V.O.P. No.231 of 2011, that the accident occurred due to rash and negligent driving of the lorry, claiming a compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only), stating *inter alia* that the age of the deceased was 46 years on the date of the accident and he was working as Senior Assistant in Primary Health Centre, Penumur and drawing a salary of Rs.18,936/- p.m. Besides, the deceased was also having Ac.10.00 of agricultural land at village Veeramangalam and getting an income of Rs.1,00,000/- p.a. from cultivation.

5. The respondent No.1 in M.V.O.P, V. Madhavan is the owner of the Gas tanker lorry who remained ex-parte. Respondent No.2 in M.V.O.P is the present appellant Insurance Company of the lorry.

6. The respondent No.3, in the M.V.O.P, S. Sruthi Keerthi, is the daughter of the deceased.

7. Smt. V. S. Rani, respondent No.4 in M.V.O.P is the widow of V. Jaychandra Naidu, owner of the Maruti Car who was driving the car and also died in the accident.

8. The respondent No.2, M/s. National Insurance Company Limited filed written statement denying the petition averments

including age, avocation and income of the deceased, Sathyanarayana. Plea was taken that the accident occurred due to gross negligence on the part of the V. Jayachandra Naidu, who was driving the Maruti Car in which deceased Sathyanarayana was travelling. The Insurance Company of the Maruti Car was also necessary party. Liability to pay compensation was denied. The compensation amount as claimed was also stated to be highly excessive and exorbitant.

9. The respondent No.2 filed additional written statement that the Maruti Car was also insured with the same respondent No.2 under private car package policy and no additional premium was collected to cover the risk of inmates of car.

10. The respondent No.3, S. Sruthi Keerthi, (daughter of the deceased) also filed written statement submitting inter alia that she is the only daughter and is also entitled for compensation being class I heir and dependent on the deceased.

11. The respondent No.4 also filed written statement stating that it was only due to rash and negligent driving of the lorry the accident was caused. Consequently, there was no liability for payment of compensation on her.

12. The Tribunal framed the following issues:-

"i) Whether the accident was caused due to the rash and negligent driving of the driver of Gas tanker lorry bearing No.AP31 T 9427 or the driver of the car bearing No. AP03 K 4752?

ii) Whether the petitioners are entitled for any compensation? If so, to what amount and from whom?

13. The claimants examined 1st claimant as P.W.1 and one G. Sahadevan as P.W.2 and also got marked documents as Exs.A1 to A7.

Exhibits marked by claimants:-

Ex.A1: Certified Copy of the FIR in Cr.No.189/2009 of Palamaner P.S.
Ex.A2: Certified copy of charge sheet.
Ex.A3: Certified copy of P.M. Certificate.
Ex.A4: Certified copy of inquest report.
Ex.A5: Certified copy of M.V.I. Report.
Ex.A6: Salary certificate issued by M.O.
Ex.A7: Attested copy of Schedule of Income Tax for the year 2008-09 issued by M.O.

14. The respondent No.2, Insurance Company examined K. Sendhil Kumar, driver of the offending lorry as R.W.1 and got marked the document Ex.B1.

Exhibits marked by respondent No.2:-

Ex.B1: True copy of policy.
Ex.B2: Xerox copy of certificate of Insurance.

15. The respondent Nos.3 and 4 did not adduce any evidence. However, the respondent No.4 got marked copy of certificate of insurance of Maruti Car as Ex.B2.

16. The Tribunal partly allowed the claim, vide judgment and order dated 08.01.2013.

17. The Tribunal recorded the finding on issue No.1 that the accident occurred due to rash and negligent driving of the offending vehicle, Lorry, by its driver resulting in the death of V. Jayachandra Naidu and Sathyanarayana.

18. The Tribunal rejected the contention of the Insurance Company and held that except the statement of R.W.1, there was no evidence to corroborate that it was due to the rash and negligent driving of the Maruti Car that there was head on collusion. The Tribunal thus did not find any contributory negligence on the part of the V. Jayachandra Naidu, driving the Maruti Car. It held the Insurance Company, liable to make the payment as the offending lorry was insured and the policy was enforce.

19. On issue No.2, the Tribunal determined the net income of the deceased as Rs.14,300/- p.m after statutory deductions out of gross salary of Rs.18,936/- p.m. (as per Exs.A6 & A7, Salary Certificate) and the age of the deceased as 46 years (as per Ex.A4). The Tribunal added 30% Rs.5,681/- towards future

prospects. It deducted 1/3rd towards personal and living expenses of the deceased, out of Rs.19,981/- p.m. (i.e. Rs.6,660/-). The monthly loss of dependency was determined as Rs.13,321/- and the annual dependency as Rs.13,321/- x 12 = Rs.1,59,848/- p.a). It applied the multiplier of 13 at the age of 46 years. Thus the Tribunal determined the total loss of dependency as Rs.20,78,024/-. In total, it awarded compensation of Rs.21,11,024/- as follows:-

i)	Towards loss of dependency	:	Rs.20,78,024-00
ii)	Towards loss of consortium to the first petitioner	:	Rs. 10,000-00
iii)	Towards loss of estate	:	Rs. 10,000-00
iv)	Towards loss of love and affection to the petitioner and 3rd respondent	:	Rs. 10,000-00
v)	Towards funeral expenses	:	Rs. 3,000-00
	Total	:	Rs.21,11,024-00

20. The Tribunal awarded costs, and interest @ 7.5% p.a. from the date of the petition till the date of realisation.

21. The Tribunal made apportionment, out of the compensation amount, holding the 1st claimant (wife of the deceased) entitled to receive Rs.12,11,024/- and the 2nd claimant (mother) entitled to receive Rs.6,00,000/-, the 3rd claimant (brother) and the 3rd respondent (daughter) entitled to receive Rs.1,50,000/- each.

22. Sri K. V. L. Narasimha Rao, learned counsel for the appellant/Insurance Company, raised the only submission that there was contributory negligence, who was driving the Maruti Car and there was thus composite negligence on the part of the deceased sitting in the car. No other point was argued.

23. Learned counsel for the claimant/respondent Nos.1 to 3 submitted that the claimants have not been awarded the just compensation. The compensation deserves to be enhanced. He submitted that he is not disputing the determination of the income of the deceased nor the age as by Tribunal. He submitted that the amount awarded under the statutory conventional head, for loss of consortium etc. is also not as per the law. The interest awarded is also on the lower side.

24. Learned counsel for the claimants, supported the finding of the Tribunal that the accident was caused due to rash and negligent driving of the lorry. He submitted that there was no composite negligence of the deceased.

25. Learned counsel for the appellant submitted that the claimant respondents have not filed any appeal for enhancement of the compensation amount. In the appeal filed by Insurance Company the claimants cannot seek enhancement.

26. We have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

27. In view of the submissions advanced the following points arise for our consideration and determination:-

1) Whether there was any contributory negligence of the driver, driving the Maruti Car ?
2) Whether there was any composite negligence of the deceased ?
3) Whether the compensation as awarded, is a just compensation and if not and deserves enhancement, whether it can be enhanced in the absence of any appeal or cross-objection by the claimant/respondents ?

Point Nos.1 & 2:-

28. Sri N. Ramakrishna, learned counsel for the Insurance Company submitted that there was contributory negligence of the deceased driver driving the Maruti Car. He submitted that the evidence of R.W.1, driver of the offending lorry, proved that the Maruti Car came from the opposite direction, being driven in a rash and negligent manner, and dashed against the front right side of the lorry. He submitted that the criminal case which was filed against the driver of the lorry also resulted in acquittal. Consequently, there was contributory negligence of the

deceased V. Jayachandra Naidu driving the Maruti Car. There was composite negligence of the deceased Sathyanarayana sitting in the Maruti Car.

29. On this point, the Tribunal considered the statement of R.W.1, but as, there was no corroboration by any independent witness, it was not believed; R.W.1 being the driver of the Lorry involved in the accident. Except the evidence of R.W.1, the 2nd respondent did not adduce any other evidence. The Tribunal placed reliance in ***APSRTC, Vijayawada and another vs. Changantipati Venkateshwaramma and others***[1]**.**

30. In ***APSRTC, Vijayawada and another vs. Changantipati Venkateswaramma and others (supra)***, also the driver of the bus R.W.1 was examined. He was accused of causing the accident. This Court observed that the statement of R.W.1 was of the person accused of causing the accident and unless it was corroborated by an independent witness it could not be taken on face value and declined to take a view different from the view as was taken by the Tribunal.

31. If the Tribunal was not satisfied on the solitary evidence of R.W.1 without corroboration, for the reasons assigned, considering ***Changantipati (supra),*** we do not find any

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[1] (2007) 4 ALT 662 : (2007) 1 ALD 708

illegality neither in the approach of the Tribunal nor in the finding recorded by it.

32. We have also perused the evidence on record.

33. Before coming to the evidence of R.W.1, we would refer to the evidence of P.W.2 (G. Sahadeva).

34. P.W.2, is the eye witness of the accident.

35. P.W.2 deposed that "I was proceeding in my Auto at about 11.30 a.m. on 01.08.2009 and the Car Maruthi 800 bearing Regn.No. AP 03 K. 4752 was proceeding in front of me carefully and cautiously on the extreme left side of the road. While so, the driver of the Gas Tanker bearing Regn.No. AP 31 T 9427 came in opposite direction in a most rash and negligent manner at high speed, lost control over the vehicle, came to the wrong side of the road and dashed against the Maruti Car and pushed the car to a distance of more than 20 feet without applying brakes. Due to the impact, the Maruthi car was badly damaged and inmates of the car Jayachandra Naidu and another sustained multiple injuries all over their body and died on the spot".

36. The Tribunal believed P.W.2 to be the eye witness of the accident and on consideration, inter alia of the eye witness evidence, and the documentary evidence, recorded that the accident occurred due to rash and negligent driving of the lorry

by its driver. The evidence of P.W.2 clearly proved that the driver of the lorry caused the accident coming from the opposite direction in most rash and negligent manner at high speed and dashed against the Maruti Car.

37. In ***Anitha Sharma vs. New India Assurance Company Limited***[2], the Hon'ble Apex Court held that the strict principles of evidence and standards of proof like in a criminal trial are inapplicable in Motor Accident Claim Cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

38. In ***Anitha Sharma (supra)***, the Hon'ble Apex Court referred to its previous judgment in ***Dulcina Fernandes v. Joaquim Xavier Cruz***[3], in which it was held that the plea of negligence on the part of the first respondent who was driving the pick-up van as setup by the claimants was required to be decided by the learned Tribunal on the touchstone of

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[2] (2021) 1 SCC 171
[3] (2013) 10 SCC 646

preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.

39. Even, R.W.1, in his cross-examination, by seeing the accident photo deposed “that the lorry came on wrong side and dashed against the Car.” Though he added that he was not at fault on the accident.

40. In ***Usha Rajkhowa and others vs. Paramount Industries and others***[4], the Hon'ble Apex Court observed and held that the question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence'. Negligence ordinarily means breach of a legal duty to care, but when used in the expression 'contributory negligence' it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an ‘author of his own wrong’.

41. We find that there is absolutely no evidence to suggest that there was any failure on the part of the Maruti Car driver to take any particular care or that he had breached his duty in any manner. In this respect, the appellant Insurance Company has

[4] (2009) 14 SCC 71

failed to discharge its burden to prove the contributory negligence on the part of the deceased driver of the Maruti Car.

42. We are satisfied that on the preponderance of evidence, including the evidence of P.W.2, the eyewitness, and in the absence of any corroboration of the evidence of R.W.1, the driver of the offending lorry vehicle, no fault can be found in the finding of the Tribunal that the accident was caused due to rash and negligent driving of the driver of the lorry and there was no contributory negligence on the part of the deceased driver of the Maruti Car. We affirm those findings on consideration of evidence by us, recorded by the Tribunal in the present case.

43. We may record that the M.V.O.P.No.231 of 2009 was with respect to the same accident, for which M.V.O.P.No.6 of 2011 was also filed by the claimant of deceased V. Jayachandra Naidu, who was driving the Maruti Car, along with his friend Satyanarayana. The claimants in M.V.O.P.No.231 of 2009 are the legal representatives of deceased Satyanarayana. The issue No.1 framed in both the M.V.O.P(s) is almost the same and the same finding has been recorded in both the M.V.O.P(s) that the accident was caused due to rash and negligent driving of the driver of Tanker Lorry, and there was no contributory negligence of the driver of the Maruti Car i.e. V. Jayachandra Naidu. The Insurance Company filed MACMA.No.957 of 2013 and the

claimants of M.V.O.P.No.6 of 2011 filed MACMA.No.132 of 2023. Both the said appeals have been decided by common judgment, delivered today, separately, dismissing the appeal of the Insurance Company and partly allowing the appeal of the claimant therein.

44. On contributory and composite negligence, in ***Khenyei vs. New India Assurance Company Limited and others***[5], the Hon'ble Apex Court held that there is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence, whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons.

45. The distinction between principles of composite and contributory negligence has been explained in ***Pawan Kumar and another vs. Harkishan Dass Mohan Lal and others***[6]. It was held that where two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct

[5] (2015) 9 SCC 273
[6] (2014) 3 SCC 590

injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others.

46. Para Nos.7, 8 and 9 of ***Pawan Kumar*** (supra) are reproduced as under:-

> *"**7.** The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edn. 1998). It would be appropriate to notice the following passage from the said work:*
>
> > *"Where two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the*

plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous…."

8. *Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is no*

attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha (supra).

9. *Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted hereinbelow: (SCC p. 751)*

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if

> *so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."*

47. We have already recorded above that there was no contributory negligence of the driver driving the Maruti Car. The finding to that effect recorded by the Tribunal has been affirmed by us. As the case of the Insurance Company was that there was contributory negligence of the Maruti Car driver in which the deceased in the present case was sitting, has failed, the arguments of the appellant that there was composite negligence on the part of the deceased namely Sathyanarayana, also fails because Sathyanarayana has suffered not due to the outcome of combination of negligence of two or more other persons but he has suffered only because of the accident caused by the rash and negligent driving of the driver of the lorry.

48. On the point Nos.1 & 2, therefore, we hold accordingly as per paragraphs 42 and 47 (supra), and consequently the plea of composite negligence as raised before us, based solely on the

plea of contributory negligence of deceased V. Jayachandra Naidu and the deceased Satyanarayana sitting in the said car, cannot be sustained and is rejected.

Point No.3:-

49. The claimants/respondents have not filed any appeal for enhancement of the compensation amount as awarded by the Tribunal. However, Sri S. V. Muni Reddy, learned counsel for the claimants/respondents submits that the claimants are entitled for the enhancement of the amount under the head of loss of consortium as also the interest @ 9% on the amount awarded. The said argument has been countered by the appellant's counsel that in the absence of any appeal by the claimants/respondents or cross-objection the amount as awarded by the Tribunal cannot be enhanced.

50. In our considered view, the claimant/respondents are entitled for just compensation and if on the face of the award or even in the light of the evidence on record, and keeping in view the settled legal position regarding the claimants being entitled to just compensation and it also being the statutory duty of the Court/Tribunal to award just compensation, this Court in the exercise of the appellate powers can enhance the amount of compensation even in the absence of appeal or cross-objection by the claimants.

51. In ***Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation and another***[7], the Hon'ble Apex Court held that the word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this (Motor Vehicles) Act or any other provision having the force of law.

52. The relevant part from Para 28 of ***Helen C. Rebello (supra)*** reads as under:-

> *".....The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having force of law. In Law Lexicon, 5th Edn., by T.P. Mukherjee "just" is described:*

[7] (1999) 1 SCC 90

"The term 'just' is derived from the Latin word Justus. It has various meanings and its meaning is often governed by the context. 'just' may apply in nearly all of its senses, either to ethics or law, denoting something which is morally right and fair and sometimes that which is right and fair according to positive law. If connotes reasonableness and something conforming to rectitude and justice something equitable, fair (vide p. 1100 of Vol. 50, Corpus Juris Secundum). At p. 438 of Words and Phrases, edited by West publishing Co., Vol.23 the true meaning of the word "just" is in these terms:

'The word "just" is derived from the Latin justus, which is from the Latin jus, which means a right and more technically a legal right-a-law. Thus "jus dicere" was to pronounce the judgment; to give the legal decision. The word "just" is denned by the Century standard Dictionary as right in law or ethics and in Standard Dictionary as conforming to the requirements of right or of positive law, in Anderson's Law Dictionary as probable, reasonable, Kinney's Law Dictionary defines "just" as fair, adequate, reasonable, probable; and justa cause as a just cause, a lawful ground. Vide Bregman v. Kress (81 NYS 1072 83 App Div1), NYS at p. 1073."

53. ***Nagappa vs. Gurudayal Singh and others***[8], the Hon'ble Apex Court held that under the Motor Vehicles Act, there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award "just" compensation which is

[8] (2003) 2 SCC 274

reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action.

54. It is apt to refer Paragraph Nos.14 and 21 as follows:-

> *"**14.** In case, where there is evidence on record justifying the enhanced Compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why such amendment or enhanced compensation should not be granted. In such cases, there is no question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only question is __ application of law as it stands.*
>
> ***21.** For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition.*

> ***Is it permissible under the Act to award compensation by instalments or recurring compensation to meet the future medical expenses of the victim?"***

55. In ***Kirti and another vs. Oriental Insurance Company Limited***[9], the Hon'ble Apex Court held that "any compensation awarded by a Court ought to be just, reasonable and consequently must undoubtedly be guided by principles of fairness, equity and good conscience".

56. Thus, the claimants of the deceased have a right to receive just compensation, to be determined by principles of fairness, equity and good conscience.

57. In ***Sharanamma v. North East Karnataka RTC***[10], the Hon'ble Apex Court held that when an appeal is filed under Section 173 of the MV Act before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also.

58. Paragraph-10 in ***Sharanamma*** (supra) is reproduced as under:-

> "10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as "the Act"), before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an

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[9] (2021) 2 SCC 166
[10] (2013) 11 SCC 517

> appeal also. Even otherwise, it is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law."

59. In view of the aforesaid, we are of the considered view that to the appeal under Section 173 of the MV Act to the High Court, in the absence of a different procedure having been provided, either under the MV Act or the APMV Rules 1989, and the applicability of Order 41 CPC also not having been excluded, in view of the judgment of the Hon'ble the Apex Court, the normal rules which apply to appeals before High Court, are applicable.

60. Order 41 CPC is that normal rule, which applies to appeals before the High Court.

61. Order 41 Rule 33 of C.P.C reads as under:-

> *"33.* ***Power of Court of Appeal*** *:-*
>
> *The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the* ***appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents***

> ***or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits*** *or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:*
>
> *Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."*

"**Illustration**:-

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y."

62. In ***Pannalal vs State Of Bombay and others***[11], with respect to Order 41, Rule 33, the Hon'ble Apex Court held that wide wording of Order 41, Rule 33 CPC, was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal, but also to give such other relief to any of the respondent as "the case may require". It was

[11] AIR 1963 SC 1516

further held that if there was no impediment in law, the High Court in appellate court therefore, though allowing the appeal of the defendant by dismissing the plaintiff's suit against it, but the plaintiff/respondents decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear the illustration puts the position beyond argument.

63. In ***Chaya vs. Bapusaheb***[12], the Hon'ble Apex Court held that this provision (Order 41 Rule 33 C.P.C) is based on a salutary principle that the appellate court should have the power to do complete justice between the parties. The rule confers a wide discretionary power on the appellate court to pass such decree or order as ought to have been passed or as the case may require, notwithstanding the fact that the Appeal is only with regard to a part of the decree or that the party in whose favour the power is proposed to be exercised has not filed any appeal or cross-objection. While it is true that since the power is derogative of the general principle that a party cannot avoid the effect of a decree against him without filing an appeal or cross-objection and, therefore, the power has to be exercised with care and caution, it is also true that in an appropriate

[12] (1994) 2 SCC 41

case, the appellate court should not hesitate to exercise the discretion conferred by the said rule.

64. In ***Pralhad and others vs. State of Maharashtra and another***[13], the Hon'ble Apex Court held that the provisions of Order 41, Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which *ought* to have been made as the *case* may require. The expression "order ought to have been made" would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying "the court may pass such further or other order as the case may require". This expression "case" would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

[13] (2010) 10 SCC 458

65. It is apt to refer Para No.18 as under:-

> *"**18.** The provision of Order 41 Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which ought to have been made as the case may require. The expression "order ought to have been made" would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying "the court may pass such further or other order as the case may require". This expression "case" would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.*

66. We are therefore of the considered view that for doing justice and to award just compensation, the provisions of Order 41 Rule 33 are to be invoked which are being invoked accordingly, as we find that there is no legal interdict or a prohibition under law, rather the mandate of law is to award just compensation. There is also no prejudice being caused to a person not a party before the Court. The appellant has been heard on the point of just compensation.

67. We, now proceed to determine the just compensation to which the respondent Nos.1 to 4 are entitled under law.

68. On the point of income, age and future prospect as determined by the Tribunal there is no dispute.

69. Though the claim petition was filed by three claimants (R1 to R3), but the Tribunal found that the respondent No.3, daughter of the deceased, (respondent No.3), was also, dependent on the deceased and awarded and apportioned the compensation to her also. So, in effect there are four claimants.

Deductions towards personal expenses:-

70. The deductions towards personal living expenses would be 1/4th and not 1/3rd as determined by the Tribunal. We shall accordingly deduct 1/4th under this head as per ***Sarla Verma vs. DTC***[14].

71. The Tribunal awarded Rs.10,000/- towards loss of consortium to the claimant No.1. All four (04), (present R1 to R4) would be entitled for compensation under the head of loss of consortium @ Rs.40,000/- each, in view of the judgment of the Hon'ble the Apex Court in ***Pranay Sethi (supra)***, and ***Magma General Insurance Company Limited vs. Nanu Ram***[15].

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[14] (2009) 6 SCC 121
[15] (2018) 18 SCC 130

72. In ***Magma General Insurance Company Limited (supra)***, the Hon'ble Apex Court held as under on 'loss of consortium', in Paras 21 to 24:-

> *"**21.** A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is 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.*
>
> ***21.1.** Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*
>
> ***21.2.** 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".*
>
> ***21.3.** Filial consortium is the right of the parents to compensation in the case of an 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.*

22. *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

23. *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*

24. *The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000/- each for loss of filial consortium."*

73. We accordingly award Rs.40,000/- each to the claimants 1 to 3 and the daughter of the deceased/respondent No.3, for the loss of consortium (i.e. Rs.1,60,000/- in total) only.

74. The Tribunal awarded Rs.10,000/- under head of 'Loss of Estate'. We enhance the same to the tune of Rs.15,000/- in view of the judgment in ***Pranay Sethi (supra)***.

75. The Tribunal awarded Rs.3,000/- towards funeral expenses which is also enhanced to Rs.15,000/- as per the judgment of Hon'ble the Apex Court in ***Pranay Sethi (supra)***.

76. The amount of Rs.10,000/- awarded by the Tribunal towards 'loss of love and affection' is maintained.

Interest:-

77. The Tribunal granted interest @ 7.5% p.a. In ***Kumari Kiran vs. Sajjan Singh and others***[16], the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @ 7.5% and awarded interest @ 9% p.a. from the date of the claim petition. In ***Rahul Sharma & Another vs. National Insurance Company Limited and Others***[17], the Hon'ble Apex Court awarded @ 9% interest p.a. from the date of the claim

[16] (2015) 1 SCC 539
[17] (2021) 6 SCC 188

petition. Also, in ***Kirthi and another vs. Oriental Insurance Company Limited***[18], the Apex Court allowed interest @ 9% p.a.

78. In view of the aforesaid the total compensation to the claimants and the respondent No.3 in M.V.O.P, is calculated as shown in the table below:-

Sl.No.	**Head**	**Compensation awarded**
1.	Net monthly income (as per the Tribunal's order)	Rs.14,300/-
2.	Future prospects (as per the Tribunal's order)	Rs.5,681/-
3.	Deduction towards personal expenditure there are 4 dependants (3 claimants & respondent No.3, daughter of deceased)	1/4th = Rs.4,995/-
4.	Total income (Net monthly)	Rs.14,986/-
5.	Multiplier	13
6.	Loss of future income	Rs.14,986/- x 12 x 13 = Rs.23,37,816/-
7.	Loss of love and affection	Rs.10,000/-
8.	Funeral expenses	Rs.15,000/-
9.	Loss of estate	Rs.15,000/-
10.	Loss of Consortium	@ Rs.40,000/- x 4 = Rs.1,60,000/-
11.	Total compensation awarded	Rs.25,37,816/-

[18] (2021) 2 SCC 166

79. On the aforesaid amount the claimants are granted interest @ 9 % p.a. from the date of the claim petition till realisation.

80. We make the apportionment of the combination amount, in view of this enhancement. The claimant No.2/respondent No.2 (mother) shall be entitled to receive Rs.6,50,000/-, the claimant No.3/respondent No.3 (brother) and the respondent No.3 in M.V.O.P (daughter) shall be entitled to receive two (02) lakhs each. Rest amount, the claimant No.1/respondent No.1 (widow of the deceased) shall be entitled to receive. The costs of the M.V.O.P shall come to the claimants and the respondent No.4 herein in equal shares and the interest amount shall be given to all the claimants and respondent No.3 in M.V.O.P proportionately to their respective apportionment.

81. The appellant/Insurance Company shall deposit the compensation amount, as aforesaid, with cost and interest, minus the amount if any already deposited, within a period of one (01) month, before the Tribunal.

82. The Tribunal shall proceed to pay the amount, in the aforesaid terms, adjusting the amount, if any, already paid.

83. In the result, M.A.C.M.A.No.945 of 2013 is dismissed but with the modifications in the Award with respect to the amount

of compensation, as made herein above, in favour of the present respondents 1 to 4.

84. The appeal is dismissed with costs in favour of the present respondents 1 to 4.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

Dr. K. MANMADHA RAO, J

Date: 04.08.2023
SCS

Note:-
L.R. Copy to be marked
B/o:- SCS

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE DR. JUSTICE K. MANMADHA RAO

M.A.C.M.A. No.945 OF 2013

(per Hon'ble Sri Justice Ravi Nath Tilhari)

Date: 04.08.2023

Scs