National Insurance Co. Ltd. Vs Ojili Gopal Reddy and Others

Court: Andhra Pradesh High Court

Date of Decision: April 26, 2005

Acts Referred: Motor Vehicles Act, 1988 â€" Section 149(2), 163A, 166, 167, 170

Citation: (2006) 2 ACC 609 : (2007) ACJ 139 : (2005) 4 ALD 301 : (2005) 4 ALT 467

Hon'ble Judges: R. Subhash Reddy, J

Bench: Single Bench

Advocate: Kota Subba Rao, SC, for the Appellant; Kota Subba Rao, SC for the Respondent No. 7, M. Subrmanyam, for Respondent Nos. 1 to 4 and V. Srinivas Rao, for the Respondent

Final Decision: Dismissed

Judgement

R. Subhash Reddy, J.
These Civil Miscellaneous Appeals, u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") are filed against

the common judgment of the I Additional Motor Accidents Claims Tribunal, Nellore, passed in O.P. Nos. 125, 126, 127 and 128 of 2000. As

much as all the claims relate to one accident and common evidence was recorded in O.P. No. 125 of 2000, all these appeals are disposed of by

this common judgment.

2. For the purpose of convenience, the parties herein are referred to as arrayed by the Tribunal below in the judgment under appeal. All these four

OPs were filed by the claimants, on account of the death of, Srikanth Reddy, Y. Syamsundara Reddy, Ramachandra Reddy and one A.G.

Paramesh, in the unfortunate motor vehicle accident which took place, on the intervening night of 3/4.6.1999. It was the case of the claimants

before the Tribunal that, on the intervening night of 3/4.6.1999, the deceased, Srikanth Reddy, Y. Syamsunder Reddy, Ramachandra Reddy and

A.G. Paramesh were travelling in the car bearing No. KA.05-N-7323 belonging to the 4th respondent and they were proceeding from Bangalore

to Gudur for their business purposes. The said car was driven by the deceased A.G. Paramesh. When the car was proceeding on National

Highway No. 5 at P.R. Rajpalem, it met with an accident. It was the case of the claimants that at the place of accident, the driver of the car had

noticed a vehicle proceeding ahead of his car, gave signal indicating that he was overtaking the vehicle and while overtaking the vehicle, he also

noticed a lorry bearing No. AEG 1519, owned by the respondent No. 2 driven by the respondent No. 1, which was coming in the opposite

direction and gave signal by operating dip and dim lights suggesting the opposite lorry driver to slow down the speed and to give way to his motor

car. It was stated despite the clear indication from the driver of the car, the driver of the lorry which was coming in the opposite direction, drove

the lorry in high speed in a rash and negligent manner and dashed against the car which was coming in the opposite direction and in the said

collision, the motor car was pushed back for considerable distance and the car was damaged completely. In the said impact, it is stated that the

lorry also turned turtle and fell down to its left on the eastern portion of the road. In the said accident, all the four inmates of the car died on the

spot. It was the case of the claimants that the accident took place only on account of the rash and negligent driving of the driver of the said lorry,

which was coming in the opposite direction to the car. It was their case that the driver of the car, though had taken all reasonable care by showing

the signals, but the driver of the lorry did not slow down and gave way to the car. Compensation was claimed on account of death of the deceased

by impleading the 2nd respondent-owner, first respondent-driver and 3rd respondent-insurer of the lorry. Further, the owner of the car was also

made as 4th respondent and insurer of the said car was impleaded as respondent No. 5 before the Tribunal. The respondents 1, 2, and 4 in all the

OPs remained ex-parte before the Tribunal below.

The Respondent No. 3-National Insurance Company limited, who is the appellant in these appeals, contested the claim by filing separate counters.

The claim was resisted by the respondent No. 3, while generally denying the allegations of the claimants. It has disputed the manner of accident,

age and income of the deceased, status of the claimants, coverage of insurance, and validity of licence of the driver of the lorry etc. It was also their

case that as much as the insured has not reported the accident to them immediately after the accident, they are not liable for payment of any

compensation. Further, disputing the validity of driving licence of the driver of the car, it was their plea that, if at all the compensation is payable,

and as much as the accident occurred on collision of both vehicles coming in opposite direction, as such it must be apportioned against both the

vehicles.

3. In similar lines, the respondent No. 5, who was insurer of the car, also contested the claim by filing counters. Even the respondent No. 5, while

generally denying the manner of accident, status of the claimants, income of the deceased, it was their case that as much as the owner of the car

was not possessing valid licence, they are not liable for payment of any compensation. It was their further case that the accident occurred only due

to negligence on the part of the driver of the lorry bearing No. AEG 1519 and as much as, there was no negligence on the part of the driver of the

car and, as such, they are not liable for payment of compensation.

4. On the above said pleadings, the Tribunal below has framed the following issues for trial.

OP No. 125/2000:

1. Whether the accident in question occurred, if so, was it due to the fault of the driver of the lorry bearing No. AEG 1519 or the driver of the car

bearing No. KA-05-N7323 or if both are responsible, what is the responsibility of each?

2. Whether the aforementioned lorry belongs to R-2 and stood insured with R-3 on the date of the accident, if so does its policy cover the risk of

the deceased?

3. Whether the aforementioned car belongs to R-4 and stood insured with R-5 on the date of the accident, if so does its policy cover the risk of

the deceased?

4. Whether the claimants are entitled to the compensation, if so, to what amount and from which of the respondents?

5. To what relief?

O.P. No. 126/2000:

1. Whether the accident in question occurred, if so, was it due to the fault of the driver of the lorry bearing No. AEG 1519 or the driver of the car

bearing No. KA-05-N7323 or if both are responsible, what is the responsibility of each?

2. Whether the aforementioned lorry belongs to R-2 and stood insured with R-3 on the date of the accident. If so, does its policy cover the risk of

the deceased?

3. Whether the aforementioned car belongs to R-4 and stood insured with R-5 on the date of the accident, if so, does its policy cover the risk of

the deceased?

4. Whether the claimants are entitled to the compensation. If so, to what amounts and from which of the respondents?

5. To what relief?

O.P. No. 127/2000:

1. Whether the accident in question occurred, if so, was it due to the fault of the driver of the lorry bearing No. AEG 1519 or the driver of the car

bearing No. KA-05-N7323 or if both are responsible, what is the responsibility of each?

2. Whether the aforementioned lorry belongs to R-2 and stood insured with R-3 on the date of the accident and if so, does its policy cover the risk

of the deceased?

3. Whether the aforementioned car belongs to R-4 and stood insured with R-5 on the date of the accident, if so, does its policy cover the risk of

the deceased?

4. Whether the claimants are entitled to the compensation, if so, to what amount and from which of the respondents?

5. To what relief ?

O.P. No. 128/2000:

1. Whether the accident in question occurred, if so, was it due to the fault of the driver of the lorry bearing No. AEG 1519 or the driver of the Car

bearing No. KA-05-N7323 or if both are responsible, what is the responsibility of each?

2. Whether the aforementioned lorry belongs to the R-2 and stood insured with R-3 on the date of the accident and if so, does its policy cover the

risk of the deceased?

3. Whether the aforementioned car belongs to R-4 and stood insured with R-5, if so, does its policy cover the risk of the deceased?

4. Whether the claimants are entitled to the compensation, if so, to what amount and from which of the respondents?

5. To what relief?

5. On the memos filed on behalf of the claimants, all the OPs were clubbed, and they were disposed of by a common order by recording evidence

in O.P. No. 125 of 2000. To prove the claim, on behalf of the claimants, PWs.1 to 5 were examined and Exs.A1 to A-17 were marked. On

behalf of the respondents, the driver of the lorry was examined as RW-1 and Exs.B-1 and B-2 were marked on their behalf.

6. The Tribunal below, with reference to the oral and documentary evidence on record, has recorded a finding that the accident occurred due to

contributory negligence on the part of the driver of the lorry bearing No. AEG 1519 and the driver of the car bearing No. KA-05-N-7323, who

also died in the accident. The Tribunal apportioned the negligence equally among the said drivers and, ultimately, imposed the liability to pay

compensation equally, on the owners and insurers of both the vehicles.

7. The present civil miscellaneous appeals are concerned, the same are filed only by the insurer of the lorry i.e. National Insurance Company

limited-respondent No. 3 and it is stated no appeals are preferred either by owner or insurer of the car involved in the accident i.e., respondents 4

and 5 in the O.Ps. In all the above four appeals, cross-objections are filed on behalf of the claimants claiming higher compensation than awarded

by the Tribunal.

8. Before I proceed to consider the claim on cross-objections, I would prefer to consider the grounds of appeal, on which the appeals are

preferred by the insurer.

9. Mainly these appeals are filed questioning the common order of the Tribunal disputing the finding recorded by the Tribunal on the negligence

aspect. It is also submitted by Sri Kota Subba Rao, learned Counsel appearing for the appellants, that the compensation awarded by the Tribunal

is also excessive and exorbitant. It is submitted that at the time of the accident, the lorry was not in motion and in spite of such evidence on record,

the Tribunal below has recorded the finding of contributory negligence on the part of the driver of the lorry also. It is the further submission of the

learned Counsel that, as much as the accident occurred only due to negligence on the part of the deceased Paramesh, who was driving the car, in

that view of the matter the owner of the lorry and the appellant-insurer are not liable for payment of any compensation. But, the learned Counsel

fairly submitted during the course of arguments that, the appellant-insurer had not obtained any permission as required u/s 170 of the Act, to

contest the award on any other grounds, than the grounds available u/s 149(2) of the Act. To consider the submissions of the learned Counsel, at

the first instance, it is to be noted that the appellant is an insurer of the lorry bearing No. AEG 1519. It is also not in dispute that the insurance

company has not obtained any permission as required u/s 170 of the Act, to contest the claim. In the case of Dama Kothilingam @ Kotilingaiah

Vs. Joint Collector and Another, , the Supreme Court has clearly held that the insurer is not entitled to file appeal questioning the award of the

Tribunal, granting compensation and the findings as regards negligence or contributory negligence of the offending vehicle, if the insurer has not

obtained any permission as required u/s 170 of the Act, to contest the award on any other grounds, than the grounds specified u/s 149(2) of the

Act.

10. In that view of the matter, as much as it is not disputed that the appellant-insurer has not obtained any such permission, in view of the judgment

cited National Insurance Company Ltd, Chandigrah v. Nicolletta Rohtagi and Ors. (supra), it cannot contest the findings of the Tribunal either on

account of negligence or with regard to quantum of compensation. Therefore, I need not discuss the evidence on record to consider the appeals,

which are filed only questioning the finding of negligence and the quantum of compensation. In view of the said judgment cited National Insurance

Company Ltd, Chandigrah v. Nicolletta Rohtagi and Ors. (supra), the contention has to be rejected and appeals are to be dismissed only on the

said grounds. In that view of the matter, further question remains as regards the claim on cross-objections claimed by the claimants seeking higher

compensation than awarded by the Tribunal.

11. So far as O.P. No. 125 of 2000 is concerned, the deceased was stated to be businessman in transport and was doing money lending business

in Bangalore of Karnataka State. To prove the earnings of the deceased and his contribution during his lifetime, in this regard, the father of the

deceased was examined as PW-1 and to prove the earnings of the deceased, reliance is placed on Ex.A-5, which is income tax assessment orders

for the years 1997-1998, 1998-1999 and 1999-2000. The said documentary evidence under Ex.A-5 discloses that during the assessment year

1997-1998, the income was shown as Rs. 56,750/- and income tax of Rs. 2,814/-was paid thereon. For the year 1998-1999, income was shown

at Rs. 80,030/- and income tax of Rs. 3,406/- was paid thereon and for the year 1999-2000, income was shown as Rs. 1,01,440/- and income

tax of Rs. 4,128/- was paid thereon. The Tribunal below has taken the average annual income of the deceased with reference to the above said

income tax returns for three years marked under Ex.A-5 and assessed the income at Rs. 79,400/-, and after deducting 1/3rd towards the personal

expenses of the deceased, assessed the loss of dependency at Rs. 52,933/-. As much as the claim was by the parents, the Tribunal below having

regard to the age of the mother of the deceased, who was 48 years of age, applied the multiplier of 8.80 basing on the judgment of this Court

reported in Bhagwandas Vs. Mohd. Arif, , and awarded compensation of Rs. 4,65,810/- on account of loss of dependency, in addition to Rs.

15,000/- on account of loss of estate, totalling to Rs. 4,80,810/-.

12. It is submitted by Sri Subrahmanyam Mani, learned Counsel appearing for the claimants, who have filed cross-objections, that the Tribunal

below ought to have considered the income as reflected in the income tax return for the assessment year 1999-2000, instead of taking the average

income. It is the submission of the learned Counsel that the latest assessment return will reflect the correct income of the deceased at the time of his

death, as such, the Tribunal below ought to have taken only the income pertaining to the assessment year 1999-2000 for the purpose of assessing

the income of the deceased. It is further submitted that, as much as the accident has taken place in this case on 3/4.6.1999, the Tribunal below

ought to have applied the multiplier as indicated in Schedule II, notified u/s 163-A of the Act. It is the submission of the learned Counsel that the

table which was notified by this Court in Bhagwandas case (supra) was in the year 1987 and as much as the table under Schedule II was notified

in the year 1994, the Tribunal below ought to have taken the. multiplier only from the table under Schedule II, but not as indicated by this Court in

the case of Bhagwandas.

On the other hand, it is submitted by Sri Kota Subba Rao, learned Counsel for the appellant-insurance company that, in this case as much as

claims are filed u/s 166 of the Act, in that view of the matter, the claimants are not entitled for compensation by applying the multiplier as notified in

Schedule II. It is submitted that Schedule II table is notified only to consider the claims which are filed u/s 163-A of the Act. It is his further case

that as much as the income tax return for the assessment year 1999-2000, which was marked under Ex.A-5, was filed subsequent to the death of

the deceased, as such, the same cannot be taken into consideration for the purpose of assessing the income of the deceased.

13. It is also submitted by the learned Counsel for the 5th respondent, who is the insurer of the car, that as much as there is no negligence on the

part of the driver of the car, as such they are not liable for payment of any compensation.

But, in this regard, it is to be seen that there is no appeal, or any cross-objections, preferred as against the findings recorded by the Tribunal below

and in that view of the matter, it is not open for the 5th respondent-insurance company to question any findings of the Tribunal below.

14. With reference to the above said submissions, in this case, it is to be seen that, for the purpose of assessing the income, the Tribunal below has

relied on the income tax return filed by the deceased for the years 1997-1998, 1998-1999 and 1999-2000 respectively. But, however, the

Tribunal has taken into consideration the income as reflected in the above said three assessment years and taken the average annual income of all

the years and assessed at Rs. 79,400/- annually. A copy of the return and tax paid thereon are filed in the additional material papers on behalf of

the cross objectors, which was marked before the Tribunal under Ex.A-5. I have perused the copy of the said self-assessment order filed by the

deceased during the year 1999 and tax paid thereon. It is evident from the said return that the assessee''s name was indicated as ''Late Srikanth

Reddy''. Further, tax due was also paid on 26.7.1999, which is subsequent to the accident and death of the deceased. In that view of the matter,

the income tax return filed for the assessment year 1999-2000 cannot be taken into consideration. But, however, it is to be seen that, if the income

for the assessment year 1998-1999 is to be taken into consideration, the same is also, at Rs. 80,030/-. But at the same time, the Tribunal below

itself, having regard to the average income, has considered with reference to all the three assessment years and arrived at Rs. 79,400/-, which was

nearer to the income as reflected for the assessment year 1998-1999. In that view of the matter, after deducting 1/3rd towards personal living

expenses, the contribution as determined by the Tribunal at Rs. 52,933/- per annum has to be approved. For the above said reasons, the

claimants-cross-objectors cannot claim any higher dependency than taken by the Tribunal, for assessing the compensation.

15. But, however, at the same time, it is to be considered with regard to appropriate multiplier for award of compensation on account of

dependency. The Tribunal below has applied the multiplier of 8.80 and awarded compensation of Rs. 4,65,810/- on account of loss of

dependency. As regards the application of multiplier is concerned, it is time and again held that the same cannot be applied as a ready reckoner by

borrowing the multiplier as indicated in Schedule II. The application of multiplier is a matter which is to be considered with reference to the facts

and circumstances of each case and having regard to the income of the deceased, nature of claim, and relationship of the claimants with the

deceased etc. Further, in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and

others, , the Apex Court has held that the multiplier method is the appropriate method for calculating just and reasonable compensation. Though

this Court has indicted multipliers in the judgment of Bhagwandas (supra), but subsequently there were amendments, to the provisions of the Motor

Vehicles Act. At the same time, in the case of Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another, , the Apex Court has held

that Schedule II can be taken as a guideline to apply the appropriate multiplier for the purpose of assessment of claims, on applications filed u/s

166 of the Act also.

16. In this case, the Tribunal below only relying on the judgment of Bhagwandas applied the multiplier of 8.80. But at the same time, it is to be seen

that the multiplier which was notified in Schedule II was with reference to the cases, where the income starts from Rs. 3,000/- upto the income of

Rs. 40,000/-. As much as the claimants are the parents, the age of the mother is a relevant factor for applying the appropriate multiplier. As per the

table notified in Schedule II of Section 163A of the Act, for the age group of 48 years, the appropriate multiplier indicated is 13. However, in this

case, as the income of the deceased was arrived at Rs. 52,933/- per annum, in that view of the matter, having regard to the multiplier table in

Schedule II to be the guideline, I am of the considered opinion that it is evidently a fit case to apply the multiplier of 12 for the purpose of award of

compensation on account of loss of dependency. As the annual dependency is arrived at Rs. 52,933/-, if the multiplier of 12 is applied, the

claimants in O.P.No. 125 of 2000 are entitled for compensation of Rs. 6,35,196/- on account of loss of dependency, in addition to Rs. 15,000/-

already granted by the Tribunal on account of loss of estate.

17. Thus, the claimants in O.P. No. 125 of 2000, who are the cross-objectors in CMA No. 709 of 2005 are entitled for total compensation of

Rs. 6,50,196/- as against the compensation of Rs. 4,80,810/- awarded by the Tribunal, with interest at 9% per annum from the date of claim

petition till realization. The respondents 2 and 3 and the respondents 4 and 5 are jointly and severally liable for payment of the said compensation

in equal ratio of 50% each with proportionate interest.

18. So far the claimants in O.P. No. 126 of 2000 are concerned, they are the parents of the deceased Y. Syamsundara Reddy. It was the case of

the claimants that the deceased was an employee working as a computer operator in M/s. Golden Forest India limited, at branch office in

Bangalore. To prove the income of the deceased, the father of the deceased was examined as PW-2, apart from marking documentary evidence

under Ex.A-10. Ex.A-10 is the salary certificate of the deceased, which shows the salary of the deceased at Rs. 4,628/- for the month of May,

1999. The Tribunal below, relying on the said evidence of PW-2 and documentary evidence under Ex.A-10 has assessed annual earnings of the

deceased at Rs. 55,536/-, and after deducting 1/3rd of the same on account of personal living expenses of the deceased, taken the annual

contribution at Rs. 37,024/-. Having regard to the age of the mother of the deceased, who was 46 years of age, the Tribunal below basing on the

judgment of Bhagwandas, applied the multiplier of 9.90 and awarded compensation of Rs. 3,66,538/- on account of loss of dependency, in

addition to Rs. 15,000/- on account of loss of estate. Thus, the Tribunal below had awarded a total compensation of Rs. 3,81,538/-.

19. Having regard to the reasoning assigned by me for applying the appropriate multiplier with reference to claimants in O.P. No. 125 of 2000,

and taking the guideline from Schedule II notified u/s 163A of the Act and further having regard to the income of the deceased, which was at Rs.

37,024/- annually, I am of the considered opinion that it is evidently a fit case for award of compensation on account of loss of dependency, by

applying the multiplier of 12. In which event, as much as the dependency is arrived at Rs. 37,024/-, if multiplier of 12 is applied, the claimants are

entitled for compensation of Rs. 4,44,288/- on account of loss of dependency, in addition to Rs. 15,000/-awarded by the Tribunal on account of

loss of estate.

20. Thus, the compensation payable to the claimants in O.P. No. 126 of 2000 and cross-objectors in CMA No. 715 of 2005 is fixed at Rs.

4,59,288/-, as against Rs. 3,81,538/-awarded by the Tribunal below, with 9% interest from the date of claim petition till realization. The

respondents 2 and 3 and the respondents 4 and 5 are jointly and severally liable for payment of the said compensation in equal ratio of 50% each

with proportionate interest.

21. So far the claimants in O.P. No. 127 of 2000 are concerned, the claimants are the wife and son of the deceased by name Ramachandra

Reddy. In the above said O.P., as against the claim of Rs. 6,18,640/-, the Tribunal below awarded compensation of Rs. 2,42,290/-. It was the

case of the claimants that the deceased was businessman and was earning Rs. 80,000/- per annum from his business. To prove the status and

income of the deceased, the wife of the deceased was examined as PW-3 and documentary evidence under Ex.A-14 was filed. Under Ex.A-14,

income tax returns were filed for the assessment years 1997-1998, 1998-1999 and 1999-2000 respectively. In the said returns, the income of the

deceased for the assessment year 1997-1998 was shown as Rs. 58,500/-, the income for the assessment year 1998-1999 was shown as Rs.

56,700/- and income for the assessment year was shown as Rs. 80,360/-. The Tribunal below, having regard to the said documentary evidence

under Ex.A-14, has taken the average annual income of the deceased at Rs. 65,187/-, and after deducting 1/3rd of the same towards personal

living expenses of the deceased, has assessed the contribution at Rs. 43,458/-annually. But, having regard to the age as mentioned in the post-

mortem report of the deceased, which was 55 years, the Tribunal below has applied the multiplier of 5 basing on the judgment of this Court in

Bhagwandas (supra) and awarded compensation of Rs. 2,17,290/-, in addition to compensation of Rs. 15,000/- on account of loss of estate and

Rs. 10,000/- on account of loss of consortium to the first claimant, who is the wife of the deceased. Thus, a total compensation of Rs. 2,42,290/-

has been awarded by the Tribunal.

22. In this claim also, it is submitted by the learned Counsel for the claimants that, having regard to dependency arrived at by the Tribunal, the

Tribunal ought to have applied the multiplier, as indicated in Schedule II, notified u/s 163A of the Act, but not the multiplier, as per the judgment of

this Court in Bhagwandas case. In this case, for the purpose of assessing the earnings of the deceased, the claimants relied on documentary

evidence under Ex.A-14, the income tax return for the assessment years 1997-1998, 1998-1999, and 1999-2000. The Tribunal below, relying on

the said evidence, has taken the average income of above three assessment years, and assessed the annual earnings of the deceased. But,

however, it is to be seen that, for the assessment year 1999-2000, there is no clear indication as to when the return was filed. But, however, in the

order itself, the description of the deceased was stated as ''Late Ramachandra Reddy''. Further, the tax was also paid only on 26.7.1999, i.e.,

after the death of the deceased. In that view of the matter, the assessment order for the year 1999-2000 cannot be taken into consideration for the

purpose of assessing the income of the deceased. The income of the deceased has to be assessed only with reference to the income, as reflected in

the assessment order for the year 1998-1999, which is assessed at Rs. 56,700/-. If the income of the deceased is considered at Rs. 56,700/-,

after deducting 1/3rd towards personal expenses of the deceased, the contribution can be assessed at Rs. 37,800/- per annum. Having regard to

the reasons, which I have already recorded above with reference to claimants in O.P. No. 125 of 2000, and further having regard to the age of the

deceased, which was at 55 years as mentioned in the post-mortem report, and in the absence of any other definite document to prove the age, I

am of the considered opinion that, the multiplier of 8 can be applied for the purpose of award of compensation, on account of loss of dependency.

23. In that view of the matter, the compensation payable on account of loss of dependency for the claimants in this O.P. is fixed at Rs. 37,800x8,

which comes to Rs. 3,02,400/-. Further, there is no reason to restrict the compensation on account of loss of consortium at Rs. 10,000/-. In view

of the judgment of the Apex Court in Susamma Thomas case (supra), the first claimant, who is the wife of the deceased, is entitled for

compensation of Rs. 15,000/- on account of loss of consortium. Further, the compensation of Rs. 15,000/- awarded by the Tribunal below on

account of loss of estate is also hereby confirmed.

Thus, the claimants in O.P. No. 127 of 2000 and cross-objectors in CMA No. 258 of 2005 are entitled for a total compensation of Rs. 3,32,400,

as against the compensation of Rs. 2,42,290/- awarded by the Tribunal, with interest at 9% per annum from the date of claim petition till

realization. The respondents 2 and 3 and the respondents 4 and 5 are jointly and severally liable for payment of the said compensation in equal

ratio of 50% each with proportionate interest.

24. So far the claimants in O.P. No. 128 of 2000 are concerned, the claimants are father, mother and brothers of the deceased. As against the

claim of Rs. 2,84,000/- (as amended), the Tribunal below awarded the compensation of Rs. 2,27,363.73 ps. It was the case of the claimants that

the deceased was the driver of the car, who was young and energetic and was earning Rs. 2,500/- per month. In view of the notification issued

under Minimum Wages Act by the Government, the Tribunal has assessed the monthly earnings at Rs. 2,733/-. As much as the deceased was

employed as driver on the vehicle owned by the 4th respondents, his claim was considered with reference to the limit as prescribed under the

provisions of the Workmen''s Compensation Act. It is relevant here to note that in view of the provisions of Section 167 of the Act, option is given

to the claimants either to move the Tribunal under the Workmen''s Compensation Act, or the Tribunal under the Motor Vehicles Act. As much as,

in this case, the death resulted from injuries and the deceased-workman is entitled to compensation by applying the relevant factor as notified in the

1st column of Schedule IV of the Workmen''s Compensation Act. Having regard to the age of the deceased as mentioned in the post-mortem

certificate, the relevant factor of 207.98 is correctly applied by the Tribunal. But, however, with regard to the amount of compensation payable,

where death results from the injury, an amount equal to 50% of the monthly wages of the deceased-workman has to be taken into consideration

for applying the relevant multiplier. Prior to amendment to the said provision by Act 30 of 1995 (with effect from 15.9.1995), the said percentage

was 40%. But though in this case the accident occurred in the year 1999 after the said amendment came into force, for the purpose of assessing

the compensation, the Tribunal below has taken the wages of 40% for the purpose of assessment of compensation.

25. As much as the monthly wage is assessed at Rs. 2,733/-, if the 50% of the same is taken into consideration, it comes to Rs. 1366.50 ps, and

on applying the relevant multiplier of 207.98, the claimants in this O.P. No. 128 of 2000 and cross-objectors in CMA No. 713 of 2005 are

entitled for compensation of Rs. 2,84,205/-. In that view of the matter, the compensation awarded by the Tribunal at Rs. 2,27,363.73 ps is

modified and enhanced to Rs. 2,84,205/-with 9% interest from the date of claim petition till realization. The respondents 2 and 3 and the

respondents 4 and 5 are jointly and severally liable for payment of the said compensation in equal ratio of 50% each with proportionate interest.

26. For the foregoing reasons, I do not find any merit in these civil miscellaneous appeals preferred by the 3rd respondent-insurance company. In

that view of the matter, all the appeals are dismissed, and cross-objections in all the CMAs are partly allowed, enhancing the compensation

payable to the claimants from Rs. 4,80,810/-to Rs. 6,50,196/- in O.P.No. 125 of 2000, from Rs. 3,81,538/- to Rs. 4,59,288 in O.P. No. 126 of

2000, from Rs. 2,42,290/- to Rs. 3,32,400/-in O.P. No. 127 of 2000, and from Rs. 2,27,363.73 ps to Rs. 2,84,205/- in O.P.No. 128 of 2000,

with interest at 9% per annum from the date of petition till realization. There shall be no order as to costs.