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(2007) 2 ACC 295 : (2007) ACJ 830 : (2006) 5 ALD 598 : (2006) 5 ALT 339

Andhra Pradesh High Court

Case No: C.M.A. No. 1144 of 1999 and M.A.C.M.A. No. 451 of 2005

P. Annamma and Others		APPELLANT
	Vs	
N.N.A. Patrick and Another		RESPONDENT

Date of Decision: Aug. 29, 2006

Acts Referred:
Motor Vehicles Act, 1939 â€" Section 110#Motor Vehicles Act, 1988 â€" Section 163A, 166

Citation: (2007) 2 ACC 295 : (2007) ACJ 830 : (2006) 5 ALD 598 : (2006) 5 ALT 339

Hon'ble Judges: G. Chandraiah, J

Bench: Single Bench

Advocate: Srinivas Mantha, in CMA 1144/99 and C. Prakash Reddy, in MACMA 451/2005, for the Appellant; Srinivas Mantha, for Respondents 1 to 4 in MACMA 451/2005, C. Prakash Reddy, for R-1 in CMA 1144/99 and for R-5 in MACMA 451/2005 and T. Mahender Rao for R-2 in CMA 1144/99, for the Respondent

Judgement

G. Chandraiah, J.
Heard both the counsel.

2. Since the parties and the impugned judgment in both the appeals are common, they are being disposed of by this common order.

3. Not being satisfied with the compensation granted by the Motor Accidents Claims Tribunal, Kurnool by the order and decree dated 26-10-

1998 in M.V.O.P. No. 713/1996, the claimants filed C.M.A. No. 1144/1999. On the other hand, aggrieved by the compensation granted by the

Tribunal in the above said M.V.O.P., the Insurance Company filed M.A.C.M.A. No. 451/2005.

4. The case of the claimants in brief is that on 8-8-1996 at about 6.30 p.m. P. David, who is the deceased, working in the office of Deputy

Executive Engineer, F.R.L. Sub-Division, Kallur, engaged the Allwyn Nissan Mini Lorry bearing No. A.P.21 -T-2297 belonging to the 1st

respondent on hire for one day for transportation of his household articles from Kurnool to Gadivemula and again from Gadivemula to Kurnool.

On 8-8-1996 in the evening the deceased left from Kurnool in the said lorry with his house hold articles and unloaded the same at Gadivemula and

again on 9-8-1996 he left Gadivemula with a load of his house hold articles like wood and iron material for Kurnool and while so at about 1.30

p.m. near Rokkapadu village, the front right side wheel was separated suddenly and the driver without any caution has applied sudden breaks and

due to which the lorry suddenly went towards right side and as a result the deceased fell down and received injuries and died on the same day in

the Hospital at Kurnool. Alleging that the accident occurred due to rash and negligent driving of the driver of the lorry and also due to bad

management of the lorry by the owner, the wife of the deceased and his sons filed claim petition, claiming compensation of Rs. 6,50,000/-.

5. The owner of the vehicle and the Insurance Company filed counters and the owner of the vehicle admitted that the deceased engaged his lorry

for transporting his house hold articles and other material from Gadivumula to Kurnool and back and that the deceased travelled in the lorry as

owner of the goods. He denied the allegations with regard to rash and negligent driving of the driver of the lorry and improper maintenance of the

vehicle.

6. The insurance company also filed counter and denied the averments of the claimants.

7. Based on the rival pleadings, the Tribunal framed the following issues for consideration:

1. Whether the pleaded accident occurred resulting in the death of the deceased and if so, was it due to the fault of the driver of R-1"s lorry?

2. Whether R-1"s lorry was insured with R-2 and if so, whether the policy covers the risk of the deceased?

3. Whether the claimants are entitled to compensation and if so, at what quantum and what is the liability of R-1 and R-2?

4. To what relief?

8. In support of the case of the claimants, P.Ws.1 and 2 were examined and Exs.A-1 to A-8 were got marked. On behalf of the respondents,

R.W.1 was examined and Ex.B-1 policy was got marked.

9. Appreciating the entire evidence, both oral and documentary, the Tribunal held that the accident occurred due to rash and negligent driving of

the driver of the lorry and that the policy covers the risk of the deceased. The Tribunal taking the salary of the deceased at Rs. 5,814 per month as

per Ex.A-8 salary certificate and deducting 1/3rd towards his personal expenses and also taking the age of the deceased as 47 as per inquest

report, and as 11 years of service was left over for the deceased as on the date of the accident, multiplied the income of the deceased per annum

i.e., Rs. 46,412/- with eleven and arrived at Rs. 5,11,632/- and also granting Rs. 2,000/- towards funeral expenses, Rs. 5.000/- under the head of

consortium and thus in all the Tribunal granted an amount of Rs. 5,18,632 and as the other claimants who are the sons of the deceased are majors,

the Tribunal denied any share to them and granted the entire compensation to the wife of the deceased and passed orders with regard to

disbursement of the said amount.

10. As already stated above, aggrieved by the above said award, both the claimants as well as the insurance company filed the respective appeals.

11. The learned standing counsel appearing for the Insurance Company submitted that the deceased travelled in the goods vehicle as a passenger

and as the goods vehicle is not authorized to carry passengers, the claimants are not entitled to any compensation. He stated that the Tribunal did

not appreciate this aspect and hence the Insurance Company is not liable to pay any compensation and the owner has to pay the entire

compensation awarded by the Tribunal, in support of this contention he relied on the judgments of the Apex Court reported in National Insurance

Co. Ltd. Vs. Bommithi Subbhayamma and Others, and United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , He further

contended that as the claim petition is filed u/s 166 of the Motor Vehicles Act, 1988 and as the income of the deceased exceeds Rs. 40,000/-, the

second schedule to Section 163A cannot be made applicable and the structured formula given in Bhagwandas Vs. Mohd. Arif, has to be followed.

He stated that as the age of the deceased is 47 years, as per the table given in the above said case (4 supra), the multiplier of 9.35 has to be

applied and the Tribunal erroneously applied 11 based on the remaining years of service and the same is not permissible. In support of this

contention, the learned Counsel relied on the Division Bench judgments of this Court in United India Insurance Company Limited, Tirupati Branch,

Tirupati Vs. Mokkala Chandramma and Others, and A. Vijaya and Others Vs. Vegurla Rajaiah and Others, . He contended that as per Ex.A-7

salary certificate produced by the claimants, the salary of the deceased is Rs. 5,336/-, but the Tribunal erroneously has taken the salary of the

deceased at Rs. 5,814 and the same is illegal. The learned Counsel further contended that the claimants are not entitled to any funeral expenses

and the trial Court erroneously granted funeral expenses. In support of this contention, he relied on the Division Bench judgment of this Court in R.

Venkateshwara Rao and Co. and Another Vs. Smt. T. Usha Ravi and Others, and the judgment passed by the learned single Judge of this Court

in United India Insurance Co. Ltd. Vs. Salammal and Others, . With these contentions, he sought for setting aside the judgment of the Tribunal.

12. On the other hand, the learned Counsel appearing for the claimants contended that except marking the policy, the insurance company did not

lead any evidence. He stated that as per the evidence available on record, the Tribunal found that the deceased was travelling in the vehicle as

owner of the goods and hence he is not a gratuitous passenger and this being a finding of fact cannot be interfered with in the appeal. He stated that

even though the claim petition is filed u/s 166 of the Motor Vehicles Act, 1988 the second schedule u/s 163A of the Act can be taken for applying

the multiplier. In this case the deceased was aged 47 as per the post-mortem certificate and the appropriate multiplier as per the structured formula

given under second schedule would be 13 and the calculation table given in Bhagavan Das case (4 supra) need not be made applicable. He stated

that the Court below without applying the multiplier method, erroneously multiplied the income of the deceased with the left over service. He stated

that multiplier method has to be followed and in support of this contention, he relied on the decision of the Apex Court in United India Insurance

Co., Ltd. v. Patricia Jean Mahajan 2002(2) An.W.R. 223 : 2002(4)ALD 118(SC) and the judgment of the learned single Judge of this Court in

K. Matura Bai and Others Vs. A. Shiva Nageswar Rao and Others, . He submitted that the claimant No. 1 who is the wife was granted meagre

amounts under the heads of funeral expenses and loss of consortium and that in fact she is also entitled to be granted amount under the head of loss

of estate and, therefore, he sought for enhancement of the amounts granted under the above said heads to Rs. 15,000/- each and a further amount

of Rs. 15,000/- for the loss of estate. With these submissions, he sought for enhancement of the compensation granted by the Tribunal.

13. In view of the above contentions, the following points arise for my consideration:

1. Whether the deceased travelled in the goods vehicle as owner of the goods or as gratuitous passenger?

2. Whether the second schedule u/s 163A of the Act can be taken as a guide for the claim petitions u/s 166 of the Act?

3. Whether the claimant is entitled to compensation under the head of "funeral expenses" apart from "loss of consortium" and "loss of estate"?

14. In the claim petition it is stated that on 8-8-1996 evening at about 6.30 p.m. the deceased who was working in the office of Deputy Executive

Engineer, F.R.L. Sub-Division, Kallur, Kurnool, had engaged the Allwyn Nissan mini lorry bearing No. A.P.21 -T-2297 belonging to the owner,

who is the 5th respondent in C.M.A. No. 451/2005 for hire for one day for transportation of his house-hold articles from Kurnool to Gadivemula

and again from Gadivemula to Kurnool and on that day i.e., 8-8-1996 evening the deceased left Kurnool with a load of his household articles in

the lorry and unloaded the same at Gadivemula and then on 9-8-1996 again he left Gadivemula with a load of his house hold articles like wood

and iron materials for Kurnool and at about 1.00 p.m., when he was sitting in the body of the lorry to safeguard his articles, near Rakkapadu

village, the front right side wheel was separated suddenly and driver without any caution has applied sudden brakes, due to which the lorry

suddenly went towards right side and as a result, the deceased who was travelling in the body as owner of the goods fell down and received

injuries and died in the hospital at Kurnool. To prove that the accident occurred due to rash and negligent driving of the driver of the lorry and that

the deceased travelled in the vehicle as owner of the goods, P.W.1 who is the son of the deceased and who also travelled along with the deceased

in the lorry was examined. His testimony is in consonance with the version in the claim petition. On the date of the accident, P.W.1 gave complaint

in III Town Police Station, Kurnool at about 8.00 p.m. and copy of the F.I.R. was sent to Midthur Police Station on the point of jurisdiction.

Ex.A-1 is the certified copy of F.I.R. and Ex.A-5 is the report of the Motor Vehicles Inspector with regard to the crime lorry. The owner of the

vehicle also admitted in the counter that the deceased engaged his lorry for transporting his goods and he testified this fact as R.W.1. To rebut the

case of the claimants that the deceased travelled as owner of the goods and not as gratuitous passenger, the Insurance Company did not lead any

rebuttal evidence. Considering these facts and circumstances and the evidence available of record, it can safely be concluded that the deceased

travelled as owner of the goods and the Tribunal has rightly considered this aspect and recorded finding of fact and I do not find any reason to

interfere with the same. Hence the contention of the counsel for the Insurance Company that the deceased travelled as passenger, is without any

basis and the issue No. 1 is answered in favour of the claimants.

15. Coming to the aspect of granting compensation, it is to be seen that as per the evidence of P.W.1, who is the son of the deceased, the

deceased was working in the office of the Deputy Executive Engineer, F.R.L., Sub-Division, Kallur, Kurnool District as Works Inspector and was

drawing a salary of Rs. 5,336/- and he filed Ex.A-7. P.W.2 is the Assistant Executive Engineer, F.R.L Sub -Division, Kallur. He deposed that the

deceased was working as Works Inspector in their Department and as Works inspector Gr.III, he was drawing a salary of Rs. 5,814/- per month

as per Ex. A-8 salary certificate, as on the date of his death. The contention of the counsel for the Insurance Company is that as per Ex.A-7 the

salary of the deceased is Rs. 5,336/- and the same has been deposed to by P. W. 1 who is the son of the deceased and Ex. A-7 salary certificate

is also filed, therefore, the Tribunal below erred in fixing the income of the deceased at Rs. 5,814/- per month. In order to advert to this issue, it is

necessary to note the date of the accident and dates of issuance of the salary certificates under Exs.A-7 and A-8. The accident occurred on 9-8-

1996 and Ex.A-7 salary certificate dated 24-10-1996 was marked through P. W. 1 who gave evidence on 10-2-1998, Ex.A-8 salary certificate

was issued in the month of August, 1998. Though P.W.2 deposed that the deceased was drawing salary of Rs. 5,814/- per month as on the date

of the accident, the same is contrary to Ex.A-7 inasmuch as the accident occurred on 9-8-1996 and as per Ex.A-7 salary certificate dated 24-10-

1996 the deceased was receiving monthly salary of Rs. 5,336/- and, therefore, the salary as on the date of the accident shall be taken into

consideration and not the salary on the future date. The Apex Court in the decision reported in Asha v. United India Insurance Co. Ltd. 1 (2004

ACC 533 (SC) held that the claimants are entitled to be compensated for loss suffered by them i.e., amount they would be receiving at the time

when the deceased was alive.

16. With regard to application of multiplier method, it is to be seen that the Apex Court in the decision reported in General Manager, Kerala State

Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, held that the multiplier-method is logically sound and legally well

established and further a departure from which can only be justified in rare and extraordinary circumstances and in very exceptional cases. The

relevant portion of the judgment at paragraph No. 11 is extracted as under for ready reference:

It is necessary to reiterate that the multiplier-method is logically sound and legally well established. There are some cases which have proceeded to

determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a

percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if

the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency

for 45 years virtually adopting a multiplier of 45 - and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life

and for immediate lumpsum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some

decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have

laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier

method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an

element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier

method on the ground that Section 110(b) of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be "just", the statutory

determination of a "just"", compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier-method is

the accepted method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. We disapprove these decisions

of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which

can only be justified in rare and extraordinary circumstances and very exceptional cases....

17. From the above judgment of the Apex Court, as already noted above, it is clear that for awarding compensation multiplier method is the

appropriate method and departure from it can be resorted to only in exceptional cases. In the present case, the Tribunal taking the age of the

deceased as 47 as per the postmortem certificate, and finding that the deceased would be in service for a period of 11 years from the date of

accident, multiplied the amount arrived at per annum, with eleven. As per the above judgment, the procedure followed by the Tribunal is not

proper and in the present facts and circumstances, I do not find any justification for departing from multiplier method formulated by the Apex

Court. Therefore, the procedure followed by the Tribunal without following the multiplier method is not sustainable and the same is liable to be set

aside.

18. The contention of the counsel for the Insurance Company is that as the present application is filed u/s 166 of the Motor Vehicles Act, 1988

and as no structured formula is provided, the table provided under the Bhagwandas case (4 supra) has to be followed and table given u/s 163A of

the Act cannot be made applicable and as per the Bhagwandas case (4 supra) the multiplier for the deceased who was aged 47 is 9.35, but the

Tribunal erroneously applied 11 and the same is not permissible. In support of this contention, he relied on the Division Bench judgments of this

Court, which were referred to supra. Per contra the contention of the counsel for the claimants is that the table given u/s 163A can be applied to

the claim petitions u/s 166 for granting compensation and as per the said table the appropriate multiplier is 13 and the Tribunal has applied 11 and

the same is not permissible. In view of the rival contentions, I the question, as framed above is whether the table given u/s 163A can be considered

for the purpose of applying the multiplier, for the claim petitions u/s 166 of the Act?

19. I had an occasion to consider the above issue in the decision reported in L.K. Kousalyadevi and Another Vs. Commissioner, Municipal

Corporation of Hyderabad and Others, , wherein considering various judgments of this Court and also the latest judgments of the Apex Court, it

was held as under:

22. Therefore, as already expressed, in my considered view, following the judgments of the Apex Court Smt. Supe Dei and Others Vs. National

Insurance Co. Ltd. and Another, ; The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, and this Court National Insurance Co. Ltd.

Vs. Ojili Gopal Reddy and Others, and K. Matura Bai and Others Vs. A. Shiva Nageswar Rao and Others, it can safely be concluded that the

second schedule to Section 163A can be taken as a guideline for the applications made u/s 166 of the Act, as no specific schedule was provided

and this is only to avoid delays in calculation of compensation by applying appropriate multiplier. Further in exceptional cases, this Court is always

at liberty to deviate from the second schedule and award compensation by applying appropriate multiplier, not more than 18.

20. The above decision has been passed taking into account latest decisions of the Apex Court and also the judgments of this Court. In the above

said judgment, the Division Bench judgment of this Court in United India Insurance Co. Ltd. v. Mokkala Chandramma (supra) was also

considered and following the latest decisions of the Apex Court, it was held that the structured formula given u/s 163A can be taken as a guideline

for the claim petitions u/s 166 of the Act. In A.V. Jaya v. Vegurla Rajaiah (supra), it was held at paragraph No. 22 that "the structured formulae in

the second schedule appended to the Act is only for those whose annual income is upto Rs. 40,000/- and all other claims are required to be

determined in terms of Chapter XII of the Act. In case of higher income the prescribed multiplier in column No. 2 of the structured formulae of the

second schedule is only a guidance.

21. Therefore, it is clear that the multiplier method is the legally well established method in granting compensation and the table given under second

schedule appended to the Act can be taken for guidance for applying the multiplier for the claim petitions u/s 166 of the Act, even for those whose

annual income exceeds Rs. 40,000/- per annum, Further a learned single Judge of this Court in K. Matura Bai and Others Vs. A. Shiva Nageswar

Rao and Others, considering the structured formula given in Bhagwandas case (4 supra) in the light of various judgments of the Apex Court and

High Courts, held as under:

18...Be it the case of assessment of compensation u/s 163A or assessment of compensation u/s 166, the multiplier in the structured formula as

given in the Second Schedule appended to the Act being the statutory provision shall have to be followed. A fort/or/the multiplier table as given in

Bhagwandas case (1 supra) having not been updated so far, there is no option for the Tribunal except to follow the statutory multiplier as given in

the structured formula. Deviation is permissible from these multipliers as held by the judgments of the Apex Court only in proper cases and under

the compelling circumstances. The legal position thus appears to be obvious from the concatenation of the cases discussed herein above.

22. In view of the above judgments the contention of the counsel for the Insurance Company that the structured formula appended to the Act

cannot be made applicable to the applications u/s 166 of the Act and as the income is more than Rs. 40,000/- is not tenable and the same is

rejected and the issue framed in this regard is answered in the affirmative.

23. The deceased as per the post-mortem certificate is aged 47 years as on the date of the accident. As already held the second schedule to the

Act can be taken for guidance in order to avoid delay in calculation of compensation by applying appropriate multiplier. Therefore, I feel, it

appropriate to apply the multiplier of 13 in the present set of facts and circumstances, in the interest of justice. The salary of the deceased as per

Ex.A-7 is Rs. 5,336/- and out of it if 1/3rd towards personal expenses is deducted, the claimant No. 1 who is the wife, would be entitled to Rs.

3,557/- per month and Rs. 42,684/- per annum and if multiplier 13 is applied, she would be entitled to Rs. 5,54,892/-.

24. The Tribunal granted amounts of Rs. 2,000/- and Rs. 5,000/- under the heads of ''funeral expenses'' and ''consortium'' and did not grant any

amount under the head ''loss of estate''. Having regard to the facts and circumstances of the case, in my considered view, the amount granted under

the head of loss of consortium is meagre. The contention of the counsel for the Insurance Company is that the deceased is not entitled to any

funeral expenses. This contention is not tenable in view of the latest decision of the Division Bench of this Court in Branch Manager, Oriental Fire

and General Insurance Co. Ltd. Vs. Dr. C. Chandra Obula Reddy and Others, wherein, it was held that the claimants are entitled to funeral

expenses. Further the Apex Court in the decision reported in G.M., K.S.R.T. Corporation, Trivandrum v. Susamma Thomas (supra) granted an

amount of Rs. 15,000/- each under the heads of ''loss of consortium and loss of estate, A single Judge of this Court in New India Assurance

Company Ltd. by its Branch Manager Vs. G. Lakshmi alias Pentamma and Others, relying on various judgments, enhanced the compensation

granted by the Tribunal below there in under the heads of ''loss of estate'' and ''loss of consortium'' to Rs. 15,000/- each. In view of these facts and

circumstances, the third issue is also answered in the affirmative.

25. In view of the above facts and circumstances I am of the considered view that the ends of justice would be met by awarding an amount of Rs.

15,000/- under the head of "loss of estate" and the amount granted under the head of "loss of consortium" is enhanced to Rs. 15,000/-. However,

I do not find any reason to enhance the amount of Rs. 2,000/- granted under the head of funeral expenses. Thus in all the claimant No. 1 is entitled

to Rs. 5,86,892/- (Rs. 5,54,892/- + Rs. 2,000/- + Rs. 15,000/- + Rs. 15,000/-) with interest at the rate of 7.5 per cent per annum from the date

of the petition till realization,

26. Both the appeals are disposed of to the extents indicated above. No costs.