APHC010045132010

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3470]**
(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 215/2010

Between:
Kakinada Madhavi and Others **...APPELLANT(S)**

AND

Potnuri Ganesh and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):
1. N SIVA REDDY

Counsel for the Respondent(S):
1. M. VIDYASAGAR, (STANDING COUNSEL FOR APGENCO)
2. NARESH BYRAPANENI
3. KOTA SUBBA RAO

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2164/2013

Between:
The Superintendent Engineer, Operation & Maintenance Circle **...APPELLANT**

AND

Kakinada Madhavi and Others **...RESPONDENT(S)**

Counsel for the Appellant:
1. M. VIDYASAGAR, (STANDING COUNSEL FOR APGENCO)

Counsel for the Respondent(S):
1. N SIVA REDDY
2. KOTA SUBBA RAO

The Court made the following:

DATE OF JUDGMENT PRONOUNCED: **04.10.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

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

_____
RAVI NATH TILHARI, J

_____
NYAPATHY VIJAY, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

+ MACMA Nos. 215/2010 & 2164/2013

% 04.10.2024

Between:
Kakinada Madhavi and Others
.....APPELLANTS in MACMA No.215/20103

The Superintendent Engineer,
Operation & Maintenance Circle
....APPELLANT IN MACMA No.2164/2013

AND

Potnuri Ganesh and Others ....RESPONDENTS IN MACMA No.215/2010

Kakinada Madhavi and Others ...RESPONDENTS in MACMA No.2164/2013

! Counsel for the Claimants : Sri K. Srinivasa Rao,
Rep. Sri N. Siva Reddy

Counsel for the New India Assurance
Company Limited : Sri Naresh Byrapaneni

< Gist :
> Head Note:

? Cases Referred:
1. 2024 SCC OnLine SC 1872
2. (2013) 7 SCC 476
3. (2017) 16 SCC 680
4. 1975 (Supp.) SCC 1
5. 1966 SCC OnLine SC 32
6. (2009) 14 SCC 541
7. (2003) 6 SCC 107
8. (2017) 16 SCC 680
9. (2018) 18 SCC 130
10. (2022) SCC OnLine SC 1683
11. (2021) 11 SCC 780
12. 2024 SCC OnLine SC 1901
13. (2015) 1 SCC 539
14. (2021) 6 SCC 188
15. (2021) 2 SCC 166

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE NYAPATHY VIJAY

M.A.C.M.A. Nos. 215/2010 & 2164/2013

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

Heard Sri K. Srinivasa Rao, learned counsel, representing Sri N. Siva Reddy, learned counsel for the claimants and Sri Naresh Byrapaneni, learned counsel for the New India Assurance Company Limited.

2. MACMA No.215 of 2010 is filed by the claimants for enhancement of compensation. MACMA No.2164 of 2013 is filed by the Superintendent Engineer, Operation & Maintenance Circle, Lower Sileru Project Division 3, Mothugudem, Khammam District, EEC, LSHE Scheme, Owner of the offending vehicle.

3. Both the appeals arise out of the same judgment and award dated 07.07.2008 passed in MVOP No.668 of 2003 by the Motor Accident Claims Tribunal (Principal District Judge) East Godavari District, Rajahmundry (in short 'the Tribunal').

4. The claimants filed MVOP No.668 of 2003 before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules 1989, claiming compensation of Rs.40,00,000/- on account of the death of Kakinada Rambabu (hereinafter referred to as 'deceased'), in a road accident, dated 15.03.2003.

5. The claim petition was filed *inter alia* on the averments that the deceased was aged about 30 years. At the time of accident, the deceased was

working as Assistant Executive Engineer Four by Sub-division Mothugudem Operation and Maintenance L.S.H.E.Scheme Mothugudem Division and was drawing Rs.23,040.50 ps per month as salary by the date of his accident. He got family, parents, wife, minor daughter and minor son. On 15.03.2003 at 5.30 p.m. the deceased and another person were going by Jeep bearing registration No.AP-20-1138 being driven by its driver, the 1st respondent in MVOP in discharge of their duties and when they reached culvert 5/7 power canal odiya camp of Miothugudem, the jeep fell into side by canal with water due to rash and negligent driving of it by the 1st respondent and as a result, the deceased died. The accident occurred due to sole rash and negligence driving of the driver of the Jeep.

6. The widow, minor son and daughter and parents of the deceased filed the claim petition MVOP No.668 of 2003.

7. The 1st respondent driver filed written statement which was adopted by the 2nd respondent, owner of the Jeep.

8. The 3rd respondent in MVOP - New India Assurance Company filed separate written statement, denying the material pleas taken by the claimants.

9. On the basis of the pleadings, the Tribunal framed the following issues:

1. Whether the deceased Kakinada Rambabu died in motor accident occurred on 15-03-2003 at about 5.30 p.m near power Canal 5/7 Mile stone Odiya Camp, due to the rash and negligent driving of Jeep bearing No.AP20-1138 by the 1st respondent?

2. Whether the petitioners being the dependants of the deceased Kakinada Rambabu are entitled to the compensation of Rs.30,00,000/- with interest thereon from all the respondents with joint and several liability?
3. To what relief?

10. On behalf of the claimants, PWs 1 to 4, namely, Kakinada Madhavi (1st claimant), Mandava Ramesh, K. Bhavani Sankaram and Pinninti Janardhana Rao were examined and Exs.A1 to A7 and Exs.X1 to Ex.X4 were marked. They are, Ex.A1-Attested photocopy of FIR in Cr.No.4/2003 of Mothugudem Police Station, Ex.A2-Attested copy of inquest report of the deceased, Ex.A3-Attested copy of report issued by M.V.Inspector, Bhadrachalam, Ex.A4-Attested copy of post mortem report of the deceased issued by Medical Officer, Government Hospital, Chinturu, Ex.A5-Attested copy of charge sheet in Cr.No.4/03 of Mothugudem Police Station on the file of Sub-Divisional Magistrate, (Mobile) at Bhadrachalam, Ex.A6-Attested copy of driving licence of the 1st respondent issued by RTA Khammam, and Ex.A7-Nativity residence certificate of the petitioner; Ex.X1-Letter issued by Power Generation Corporation Limited, Upper Sileru, Ex.X2-Last Pay Certificate of the deceased issued by Drawing Officer Civil (O&M), Circle/Upper Sileru, Ex.X3-Statement of pay drawn particulars of the deceased issued by Asst. Executive Engineer Civil (O&M) Circle/Upper Sileru, and Ex.X4-Last Drawn Pay particulars for the month of March, 2003 of the deceased issued by Senior Accounts Officer, Mothugudem.

11. On behalf of the 3rd respondent in MVOP - New India Assurance Company, RWs.1 & 2, namely, Ch. Satyanarayana Murthy and M. Govinda

Rao,were examined and Exs.B1 to B5 were marked, they are, Ex.B1-Pay drawn particulars of the deceased for the month of February 2003 issued by Accounts Officer Civil (O&M) Circle/Upper Sileru, Ex.B2-Form 24 B Register of Motor Vehicle issued by RTA Khammam, Ex.B3-Motor Vehicle proposal, Ex.B4-Copy of insurance policy filed by 3rd respondent, and Ex.B5-Form 24 B-Register of Motor Vehicle issued by RTA Khammam.

12. The Tribunal, on consideration of the evidence on record, returned a finding that the accident had taken place due to rash and negligent driving of the driver of the Jeep, in which Kakinada Rambabu died due to the injuries, received by him. The issue No.1 was settled in favour of the claimants.

13. On the point of compensation, issue No.2, the Tribunal recorded that the deceased was an Assistant Executive Engineer Four by Sub-division Mothugudem Operation and Maintenance L.S.H.E.Scheme Mothugudem Division and permanent employee. The Tribunal considered Ex.X2 issued by the Accounts Officer/Civil (O&M) Circle/Upper Sileru, last pay drawn certificate, from which, it recorded that the deceased was earning gross salary of Rs.23,403/- per month. The net salary of the deceased was taken at Rs.16,991-75 ps per month. One-third (1/3rd) was deducted towards personal expenses of the deceased. The Tribunal considered that there were five claimants and they were dependents on the deceased. At the age of 40 years, the Tribunal applied the multiplier of '14.40' as per II schedule of the Motor Vehicles Act and awarded an amount of Rs.19,57,449/- towards dependency. It added Rs.15,000/- towards loss of consortium to the widow claimant and Rs.15,000/-

each to all claimants for loss of estate, and awarded Rs.500/- towards transport charges, and awarded Rs.2,500/- towards funeral charges. Thus, the Tribunal held that the claimants were entitled to Rs.19,90,449/-. The appellant in MACMA No.2164 of 2013, the Superintendent Engineer, Operation & Maintenance Circle, Lower Sileru Project Division 3, Mothugudem, Khammam District, EEC, LSHE Scheme –APSRTC-2nd respondent in MACMA.No.215 of 2010 was held liable to deposit the awarded amount. The Tribunal also granted interest @6% per annum from the date of claim petition till the date of deposit with costs and interest.

14. Challenging the Award dated 07.07.2008, the Superintendent Engineer MACMA No.2164 of 2013. The claimants filed MACMA No.215 of 2010 for enhancement of the compensation amount.

15. Learned counsel for the claimants/appellants raised the following submissions;

i) That the Tribunal has considered the age of the deceased as 40 years by drawing adverse inference against the claimants as the claimants did not produce the records of the deceased from the department where he was working as Assistant Executive Engineer. He submitted that as per the postmortem report and the inquest report, the age of the deceased was 36 years;

ii) That the deduction 1/3rd towards personal expenses of the deceased are on the higher side. It should be 1/4th as there were 5 claimants/defendants;

iii) that the Tribunal did not award future prospects. The deceased being the employee of APC-NCO having permanent job and below 40 years was entitled for future prospects @ 50% of the established income;

iv) that the Tribunal determined the monthly income of the deceased as Rs.16,991-75ps and the annual income as Rs.2,03,901/-. He submitted that as per Ex.X2 the Last Pay Certificate of the deceased issued by the Drawing Officer Civil (O&M) Circle/Upper Sileru, the deceased was getting a monthly salary of Rs.23,403/- and his net salary shown as Rs.17,491-75 ps. The Tribunal, out of Rs.23,403/- the gross salary, deducted Rs.6,411/- total deductions to arrive the figure at Rs.16,991/-. But, as is evident from Ex.X2, except the deduction towards professional tax, no other deductions could be made, which included contribution towards GPF, LIC policy, GIS, GSLI, CC/WC/SC etc.

v) That the monthly income based on Ex.X2 would come to Rs.23,403/- (-) Rs.200/- = Rs.23,203/-.

vi) That the Tribunal wrongly applied multiplier '14.40' whereas at the age group of 36-40 the appropriate multiplier would be '15';

vii) That under conventional heads the amount has not been awarded as per the settled law; and

viii) That the amount of compensation does not represent just and fair compensation, to which the claimants are legally entitled;

ix) The interest @6% p.a. awarded by the Tribunal is on the lower side, it should be @9% p.a.

16. Learned counsel for the owner of the offending vehicle, respondent No.2 in the claimants' appeal and the appellant in MACMA No.2164 of 2013 did not appear.

17. Sri Naresh Byrapaneni, learned counsel for the New India Assurance Company Limited submitted that the claimants' claim against the New India Assurance Company Limited has been dismissed. So, the dispute now is between the claimants and the owner.

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

19. The following points arise for our consideration:

A. Whether the compensation amount as awarded by the Tribunal is just and fair compensation, or it deserves enhancement?

B. Whether the interest @ 6% awarded by the Tribunal deserves to be enhanced?

20. We would consider the point 'A' just and fair compensation under different heads as follows:

I. <u>Income:</u>

21. As per Ex.X2, the pay particulars of the deceased the gross salary was Rs.23,403-50 ps. The total deductions were Rs.6,411-75 ps. The recoveries show, Rs.200/- towards professional tax. The other recoveries are towards GPF, LIC policy, GIS and other schemes. We are of the view that except the recovery towards professional tax, no other recovery, could be

deducted from the gross salary. We are not oblivious that the net salary for computation of compensation is gross salary minus tax component.

22. ***Meenakshi v. Oriental Insurance***[1] wherein in paragraph-10 the Hon'ble Apex Court held as under:

> "**10.** Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future prospects, while calculating the total compensation payable to the appellant."

23. So far as the income tax is concerned in the case of ***Vimal Kanwar and Ors. Vs Kishore Dan and Ors.,***[2]the Hon'ble Apex Court held that in the case of salaried person, in the absence of any evidence that the income tax on the estimated income of the employee was not deducted from salary of the employee during the particular month or the financial year, it is presumed that the salary paid to the deceased as per the last pay certificate was paid in accordance with law i.e., by deducting the income tax on the estimated income of the deceased by that month or the financial year.

24. The Hon'ble Apex Court in ***Vimal Kanwar (supra)*** held in paras 22 to 25 held as under:

> "22. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act"

[1] 2024 SCC OnLine SC 1872
[2](2013) 7 Supreme Court Cases 476

23. In Sarla Verma (Supra), this Court held "20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation." This Court further observed that "24…..Where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "salaries" one should keep in mind that under Section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961. **Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income-tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.**

However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

24. In the present case, none of the respondents brought to the notice of the Court that the income-tax payable by the deceased Sajjan Singh was not deducted at source by the employer-State Government. No such statement was made by Ram Avtar Parikh, PW-2 an employee of Public Works Department of

the State Government who placed on record the Last Pay Certificate and the Service Book of the deceased. The Tribunal or the High Court on perusal of the Last Pay Certificate, have not noticed that the income tax on the estimated income of the employee was not deducted from the salary of the employee during the said month or Financial Year. In absence of such evidence, it is presumed that the salary paid to the deceased Sajjan Singh as per Last Pay Certificate was paid in accordance with law i.e. by deducting the income-tax on the estimated income of the deceased Sajjan Singh for that month or the Financial Year. The appellants have specifically stated that Assessment Year applicable in the instant case is 1997-1998 and not 1996-1997 as held by the High Court. They have also taken specific plea that for the Assessment Year 1997-1998 the rate of tax on income more than 40,000/- and upto Rs. 60,000/- was 15% and not 20% as held by the High Court. The aforesaid fact has not been disputed by the respondents.

25. In view of the finding as recorded above and the provisions of the Income-tax Act, 1961, as discussed, we hold that the High Court was wrong in deducting 20% from the salary of the deceased towards income-tax, for calculating the compensation. As per law, the presumption will be that employer-State Government at the time of payment of salary deducted income-tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the Last Pay Certificate at Rs. 8,920/- should be accepted which if rounded off comes to Rs. 9,000/- for calculating the compensation payable to the dependent (s)."

25. Consequently, following ***Vimal Kanwar*** (supra) judgment, we draw presumption that the deceased being salaried person, the payment as per Ex.X2 was after the deductions of income tax and as per the slab. The owner did not file any affidavit to show that the income tax was not deducted. Consequently, we take the monthly net income of the deceased as Rs.23,403/- (-) Rs.200/- = Rs.23,203/- per month and Rs.2,78,436/- per annum.

II. Future prospects:

26. The Tribunal has awarded nothing towards future prospects.

27. In ***Pranay Sethi*** **(supra)** the Constitution Bench of the Hon'ble Apex Court, has held as under in Paras 59.3 and 59.4 :-

> "59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> 59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

28. The claimants are entitled for future prospects. In view of the judgment of the Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi***[3] the Tribunal ought to have awarded 50% of the income of the deceased in addition to the income, as 'future prospects' as he was working as Assistant Executive Engineer with the Superintending Engineer, Operation and Maintenance Circle, Lower Sileru Project Division-3, LSHE Scheme, Mothugudem Khammam District, respondent No.2 in the claimants' appeal MACMA No.215 of 2010, and being below 40 year of age.

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[3] (2017) 16 SCC 680

III. <u>Age:</u>

<u>(i) Postmortem Report:</u>

29. So far as the age of the deceased is concerned, as per the postmortem report the deceased was aged about 36 years. Any document with respect to the proof of age or date of birth of the deceased was not filed. The age of the deceased could be proved by filing the certificates, such as Secondary School Certificate (SSC) or even by producing his service record, which were not filed. However, there was no other document except postmortem report with respect to the age of the deceased. We are not oblivious that the postmortem report is not the proof of the date of birth. However, we are of the view that in the absence of any other document with respect to the age or with respect to the date of birth, the postmortem report could be relied upon to prove the age of the deceased, and particularly, when there was no evidence to the contrary led by the owner/emploer. The postmortem report though may not be conclusive for determination of age, which may only show the age, approximately, but that cannot be brush aside at all unless there was evidence to the contrary.

30. We are of the view that the postmortem report must have been placed reliance upon for the determination of age of the deceased as 36 years in the absence of any other evidence, including any contrary evidence.

31. In the case of the ***Divisional Manager, the Oriental Insurance Company Limited v. K. Veeralakshmi and others*** which was decided on 29.11.2016 in C.M.A(MD) No.758 of 2014 and M.P.(M.D)No.1 of 2014, the

Madras High Court held that the doctors prescribe the age in the post-mortem certificate based on the anatomical analysis and it will be certainly approximate and can never be accurate. In the absence of any other document like Ration card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the post-mortem certificate shall be considered. In the said judgment, the Madras High Court relied on the previous Division Bench of the same High Court.

32. It is apt to refer paragraph 7 and 8 of the aforesaid judgment as under:

> "7. The above judgment submitted by the learned counsel for the respondents needs not be relied upon, in view of the fact that the Hon'ble Division Bench of this Court in a judgment reported in 2005 (5) CTC 515 (The Managing Director, Tamil Nadu State Transport Corporation, Madurai v. Mary and others) stated as follows:
>
> "9. As regards compensation, the appellant is aggrieved by the assessment of the age of the deceased at 41. The age of the deceased had been assumed to be 41 on the basis of the birth certificate/certificate issued by the Church at the time of anointing of the deceased on 25.7.1959. As against the said material, the appellant seeks to rely on the post mortem certificate fixing the age at 50. It is needless to mention that the age fixed under the post mortem certificate cannot be stated to be an accurate age and the same could be referred to only in the absence of any other material. When a contemporaneous birth certificate is issued under Ex.A-3 disclosing the age of the deceased as 41, there is no justification to reject the said certificate. On the basis of the said certificate, the multiplier of 15 has been properly adopted."
>
> 8. It is always known that the Doctors prescribed the age in the post-mortem certificate based on the anatomical **analysis and it will be certainly appropriate and can never be accurate. Therefore, in the absence of any other document like Ration card, Birth certificate, Passport, Aadhar card and Voter I.D., the age prescribed in the post-mortem certificate shall be considered.** When the self declared age is available in the above said Government I.Ds, the same is to be taken as conclusive and the age in the post-mortem certificate can never be construed as conclusive. Therefore, this Court is not inclined to consider the arguments advanced by the learned counsel for the respondent and the findings of the Hon'ble Division Bench will prevail over and accordingly, this Court is of the unambiguous view that the age stated in

the family ration card alone will prevail for the purpose of fixation of compensation by the Tribunal."

(ii) Adverse Presumption

33. The Tribunal has determined the age of the deceased as 40 years by drawing adverse inference that the claimants did not produce the service record of the deceased.

34. Though the Indian Evidence Act does not apply strictly to the motor accident claim cases, and though the Tribunal has not referred to any provision under which the adverse inference has been drawn, but we would trace it and refer to Section 114 of the Indian Evidence Act under which the Court may presume as provided therein.

35. Section 114 of the Indian Evidence Act reads as under:

Section 114: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

llustrations

The Court may presume --

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: --

as to *illustration* (a) -- a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to *illustration* (b) -- A, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to *illustration* (b) -- a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to *illustration* (c) -- A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under As influence;

as to *illustration* (d) -- it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to *illustration* (e) -- a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration* (f) -- the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to *illustration* (g) -- a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to *illustration* (h) -- a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to *illustration* (i) -- a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it."

36. Clause (g) of Section 114 of the Evidence Act shows that the Court may presume the evidence which could be and is not produced, if produced would be unfavourable to the person who withholds it. Section 114 of the Evidence Act further provides that the Court shall have regard to such facts as given thereunder, as to the illustrations, in considering if such maxim do or do not apply to a particular case before it. As to illustration (g), it is provided that a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.

37. So far as the presumption under Section 114 of the Evidence Act is concerned, it provides that, the Court 'may presume'. Section 4 of the Evidence Act may be reproduced as to what is meant by 'may presume' as under:

"Section 4. "**May presume**" – Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

38. As held in ***Indira Nehru Gandhi v. Raj Narain***[4] presumption under Section 114 of the Evidence Act is always optional and one of fact, depending upon the whole set of facts. It is not obligatory. We are of the view that the presumption being optional and not obligatory to draw such presumption under Section 114 of the Evidence Act, in the facts of the present case i.e., in the presence of the postmortem report showing the age of the deceased, the Tribunal ought not to have drawn the presumption.

39. In ***Srichand K. Khetwani v. State of Maharashtra***[5] the Hon'ble Apex Court observed and held that *"an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained, it cannot be said what that evidence could have been and therefore no question of presuming that that evidence would have been against the prosecution, under Section 114, illustration (g) of the Evidence Act, can arise."*

40. In ***Mussauddin Ahmed v. State of Assam***[6] the Hon'ble Apex Court held as under in paragraph-11:

"**11.** It is the duty of the party to lead the best evidence in its possession which could throw light on the issue in controversy and **in case such material**

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[4] 1975 (Supp.) SCC 1
[5] 1966 SCC OnLine SC 32
[6] (2009) 14 SCC 541

evidence is withheld, the court may draw adverse inference under Section 114 Illustration (*g*) of the Evidence Act, 1872 notwithstanding that the onus of proof did not lie on such party and it was not called upon to produce the said evidence (vide *Gopal Krishnaji Ketkar* v. *Mohd. Haji Latif* [AIR 1968 SC 1413])."

41. From the aforesaid judgments, it is evident that before drawing an adverse inference against a party, such party must have withheld the material evidence.

42. In ***Lalita Jalan v. Bombay Gas Co.Ltd.***[7] the Hon'ble Apex Court held, as to the meaning of 'withholding' in paragraph – 6 as under:

"6…… The **dictionary meaning of the word "withholding" is to hold back; to keep back; to restrain or decline to grant**. The holding back or keeping back is not an isolated act but is a continuous process by which the property is not returned or restored to the company and the company is deprived of its possession. If the officer or employee of the company does any such act by which the property given to him is wrongfully withheld and is not restored back to the company, it will clearly amount to an offence within the meaning of Section 630 of the Act. ……."

43. So, unless the finding was that the claimants were in possession of those documents which were required to be produced being the best evidence but did not produce and withheld, there was no occasion to draw the presumption.

44. The Tribunal has not recorded that the claimants were in possession of SSC certificate of the deceased or/and the copy of the service record of the deceased. In the absence of any such finding of possession, the question of withholding would not arise. There is no finding that there was withholding of

[7] (2003) 6 SCC 107

such document. We are of the view that the Tribunal legally erred in drawing the adverse inference against the claimants and in holding the age of the deceased as 40 years based on such adverse inference.

45. We are of the view that merely on account of failure to obtain evidence from the corporation and to produce the same, an adverse inference could not be drawn against the claimants. On the contrary, if the case of the owner/corporation was that the deceased was 40 years of age and not of the age as per the postmortem report, the burden was on them to file evidence, may be the service record of the deceased which must be in their possession being the employer of the deceased, but they failed to produce any such evidence. So, if at all, the adverse inference should have been drawn against the owner that they failed to file the evidence contrary to the evidence of postmortem report.

46. We therefore hold that the age of the deceased was 36 years.

IV. <u>Deduction towards personal expenses:</u>

47. The Tribunal deducted 1/3rd towards personal expenses of the deceased.

48. In ***Sarla Verma*** (supra), the Hon'ble Apex Court held as under in Paras-30, 31 & 32:

> "**30.** Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra* [(1996) 4 SCC 362] , the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction **towards personal and living expenses of the deceased, should be one-third (1/3rd)**

where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

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

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

49. The aforesaid judgment has been upheld by the Constitution Bench in ***Pranay Sethi*** (supra).

50. The claimants were 5 in number. They have been held by the Tribunal as dependants on the deceased. Consequently, towards personal expenses of the deceased 1/4th deduction would apply and not 1/3rd.

51. We, accordingly, deduct 1/4th towards personal expenses of the deceased.

V. Multiplier:

52. In view of ***Sarla Verma*** (supra) at the age of 36 years, the appropriate multiplier is '15'. We accordingly apply multiplier '15' instead of '14.40' as applied by the Tribunal.

VI. Conventional Heads:

53. On the point of the conventional heads, as per the judgments in ***National Insurance Company Limited V. Pranay Sethi and Others***,[8] ***Magma National Insurance Company Limited vs Nanu Ram @ Chuhru Ram and Ors.***,[9] ***Smt. Anjali and Others V. Lokendra Rathod and Others,***[10] ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.,***[11] and ***Rojalini Nayak and Others vs Ajit Sahoo and Others***[12] we award the enhanced amounts under the Conventional Heads of loss of estate, loss of consortium and funeral expenses, as Rs. 18,150/-, Rs. 48,400/- (per claimant) and Rs. 18,150/- respectively as was awarded in ***Rojalini (Supra)***.

54. Thus, considered. The claimants are entitled to the following amount of just and fair compensation as per the table below;

S. No.	Head	Compensation Awarded
1.	Net Annual Income (As per the Tribunal)	Rs. 23,203/- x 12 = Rs. 2,78,436/-

[8] (2017) 16 SCC 680
[9] (2018) 18 SCC 130
[10] (2022) SCC OnLine SC 1683
[11] (2021) 11 SCC 780
[12] 2024 SCC OnLine SC 1901.

2.	Future Prospects	Rs. 1,39,218/- (i.e., 50% of the income) Total (i.e., 1+2) = Rs. 4,17,654/-
3.	Deduction towards personal expenditure (i.e.1/4th)	Rs. 1,04,413/-
4.	Total Annual loss	Rs. 3,13,240/-
5.	Multiplier of 15 at the age of 36 years i.e.	15 x 3,13,240/- = **Rs. 46,98,607/-**
6.	**Conventional Heads:**	
	i) Loss of Consortium	Rs. 2,42,000/- (Rs. 48,400/- x 5)
	ii) Loss of Estate	Rs. 18,150/-
	iii) Funeral expenses	Rs. 18,150/-
7.	**Total Compensation (Rupees forty nine lakh seventy six thousand nine hundred and seven only)**	**Rs. 49,76,907/-**

Point 'B':

55. The Tribunal has awarded interest @ 6% per annum. In ***Kumari Kiran v. Sajjan Singh***[13], 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 v. National Insurance Company***

[13] (2015) 1 SCC 539

Limited[14] and ***Kirthi v. Oriental Insurance Company Limited***[15] the Hon'ble Apex Court allowed interest @9% p.a.

56. We accordingly allow @9% p.a. interest from the date of the claim petition till deposit.

Result:

57. In the result,

(i) MACMA No. 215 of 2010 by claimants is allowed, enhancing the compensation amount, and with directions hereunder, with costs throughout in their favour.

(ii) MACMA No.2164 of 2013 by the Superintendent Engineer Operation, owner of the offending vehicle is dismissed with costs to the claimants.

(iii) The claimants are entitled for the amount of compensation as per this judgment and we grant the same with interest therein @ 9% per annum from the date of claim petition till deposit in Tribunal;

(iv) The Superintendent Engineer Operation, owner of the offending vehicle shall deposit the amount as aforesaid in paras-54 & 56, after adjusting the amount already deposited / paid, if any, before the Tribunal, within a period of one month from today, failing which, the amount shall be recovered, as per law;

[14] (2021) 6 SCC 188
[15] (2021) 2 SCC 166

(v) On such deposit being made, the claimants shall be entitled to withdraw the same, proportionately, as per the award of the Tribunal;

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: 04.10.2024
Dsr

Note:
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