APHC010140972017

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: 1774/2017

Between:
Erramreddy Mamatha, Spsr Nellore Dist & Anr and Others **...APPELLANT(S)**

AND

G Sreeramulu Naidu Nellore 3 Others and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):
1. SIVAPRASAD REDDY VENATI

Counsel for the Respondent(S):
1. AMANCHARLA SATISH BABU

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 750/2017

Between:
The New India Assurance Company Limited **...APPELLANT**

AND

Erramreddy Mamatha 4 Others and Others **...RESPONDENT(S)**

Counsel for the Appellant:
1. AMANCHARLA SATISH BABU

Counsel for the Respondent(S):
1. SIVAPRASAD REDDY VENATI

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

+ M.A.C.M.A. Nos. 1774 & 750 of 2017

% 04.10.2024

Between:
Erramreddy Mamatha,
Spsr Nellore Dist & Anr and Others
.....APPELLANTS in MACMA No.1774/2017

The New India Assurance
Company Limited
....APPELLANT IN MACMA No.750/2017

AND

G Sreeramulu Naidu
Nellore and 3 Others ....RESPONDENTS IN MACMA No.1774/2017

Erramreddy Mamatha
and 4 Others ...RESPONDENTS in MACMA No.750/2017

! Counsel for the Claimants : Sri Siva Prasad Reddy Venati

Counsel for the New India Assurance
Company Limited : Sri Sri Amancharia Satish Babu

< Gist :

> Head Note:

? Cases Referred:

1. AIR 2007 SC 1609
2. 2014 LawSuit (Hyd) 1049
3. (2008) 13 SCC 198
4. (2004) 3 SCC 297
5. 2012 SCC OnLine J&K 378
6. 2001 ACJ 180 (Karnataka)
7. (2008) 13 SCC 198
8. 2024 SCC OnLine AP 3955
9. (2013) 11 SCC 517
10. (2005) 3 SCC 254
11. (2008) 3 SCC 729
12. (2008) 4 SCC 224
13. (2020) 4 SCC 228

14. 2022 LiveLaw (SC) 1012
15. 2017 (2) Mh.L.J 822
16. 2003 SCC OnLine MP 640
17. First Appeal No.579 of 2019
    Dated 06.05.2022, HC of Gujarat
18. 2015 (0) GLHEL-HC 227573
19. 2011 SCC OnLine Del 3867
20. 2021 SCC OnLine SC 3496
21. 2024 SCC OnLine AP 3868
22. MACMA.2906 of 2012, APHC
    Decided on 20.09.2024
23. (2009) 6 SCC 121
24. (1994) 2 SCC 176
25. (1996) 4 SCC 362
26. (2005) 10 SCC 720
27. 2022 SCC OnLine Ker 546
28. (2017) 16 SCC 680
29. MACMA.36 of 2024, APHC
    Decided on 18.12.2023
30. (2015) 1 SCC 539
31. (2021) 6 SCC 188
32. (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. 1774 & 750 of 2017

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

Heard Sri Siva Prasad Reddy Venati, learned counsel for the claimants and Sri Amancharla Satish Babu, learned standing counsel for the Insurance Company in both the appeals.

2. The appellants in MACMA No.1774 of 2017 are the claimants in MVOP No.318 of 2010. They are the respondents in MACMA No.750 of 2017.

3. The New India Assurance Company Limited, Nellore is the appellant in MACMA No.750 of 2017 and one of the respondents in MACMA No.1774 of 2017.

4. The claimants filed MVOP No.318 of 2010 in the Principal Motor Accidents Claims Tribunal, Nellore (in short 'the Tribunal') under Sections 166 and 140 of the Motor Vehicles Act, 1988 (in short 'MV Act'), claiming compensation of Rs.1,50,00,000/- on account of the death of Dr.Erramreddy Prasad Reddy (hereinafter referred to as 'deceased'), their predecessor, in a road accident, dated 03.10.2008.

5. The claim petition was filed *inter alia* on the averments that the deceased was aged about 40 years. He was a Dentist, worked as Managing Director of Anjana Dental Care Private Limited, T-Nagar, Chennai, and was drawing Rs.50,000/- per month as salary by the date of his accident. Apart from that he was working as Associate Professor in Narayana Medical College

and Hospital, Nellore and other reputed institutions. He was an income tax assessee. He got family, parents, wife and son. On 03.06.2009 at 6 p.m. the deceased was proceeding from Chennai to Nellore in his Car bearing registration No.TN-07-AL-2302, and when reached near Elavur Three Lane Flyover, on G. N. T. Road, one lorry bearing registration No.AP-26-W-6989, came from Nellore towards Chennai in opposite direction, being driven by the 1st respondent-G. Sreeramulu Naidu, in a rash and negligent manner and dashed the Car of the deceased, as a result the front portion of the Car of the deceased was crushed under the lorry, and the deceased received fatal injuries and died on the spot. The accident occurred due to sole rash and negligence driving of the driver of the lorry.

6. The widow and son of the deceased filed the claim petition. Parents of the deceased were not added in the claim petition and they were shown as respondents No.3 & 4 in the claim petition.

7. The 1st respondent in MVOP, owner-cum-driver of the Lorry remained *ex parte*.

8. The 2nd respondent in MVOP, New India Assurance Company, filed counter denying the allegations. *Inter alia*, it was submitted that the accident occurred due to rash and negligent driving of the driver of the Car bearing registration No.TN-07-AL-2302 and due to negligence of driver of lorry. The owner and the insurance company of the car were also necessary parties and in their absence, the petition was bad for non-joinder of parties.

9. The 3rd respondent in MVOP, the mother of the deceased, filed counter, which was adopted by the 4th respondent in MVOP, the father of the deceased. It was submitted that with ulterior motive, the claimants had not impleaded the mother and father of the deceased in the claim petition as claimants, though they were also entitled for compensation and prayed to apportion the compensation to them as well.

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

1. Whether the death of Dr. Erramreddy Prasad Reddy was due to rash and negligent driving of the driver of the lorry bearing registration No.AP-26-W-6989 owned by R1?
2. Whether the claimants are entitled for any compensation? If so, against whom?
3. To what relief?

11. On behalf of the claimants, PWs 1 to 5, namely, Smt. Erramreddy Mamatha (1st claimant), Sri Shaik Rajack (eyewitness), Sri G. Kesavardhana Reddy, Chartered Accountant, (through Commissioner), Dr. S.Karthikeyan (through Commissioner) and Sri T.Munivel, were examined and Exs.A1 to A24 through PWs 1 to 3, Exs.C1 to C41 through PW 3, and Exs.X1 & Ex.X2 through PW 5 were marked. They are, Ex.A1-Attested photocopy of FIR in Cr.No.246/2009 of F3 Arambakkam Police Station, Thiruvalluru District in Tamil Language with English translated copy, Ex.A2-Attested photocopy of inquest report of deceased in Tamil language with English translated copy, Ex.A3-Attested photocopy of postmortem certificate of deceased, Ex.A4-Death

certificate of deceased in Tamil language with English translated copy, Ex.A5-Attested photocopy of report given by M.V.I, in Tamil language with English translated copy, Ex.A6-Report of death given by Tamilnadu Police in Tamil language with English translated copy, Ex.A7-Driving licence of deceased, Ex.A8-Attested photocopy of registration certificate of Hyundai Car bearing registration No.TN-07-AL-2302 in the name of deceased, Ex.A9-Attested photocopy of insurance policy of Hyundai Car, Ex.A10-Passport of deceased, Ex.A11-Certificate issued by Anjana Dental Care Private Limited, Chennai to the effect that deceased was their former Managing Director, Ex.A12-Attested photocopy of Income Tax acknowledgment showing filing of returns of deceased for the assessment years 2008-2009, 2009-2010, Ex.A13-Certified photocopy of charge sheet filed by Police, Tamilnadu in Tamil language with English translated copy, Ex.A14-Certificae issued by University of Mysore in favour of deceased that he passed Bachelors Degree of Dental Surgery in the year 1993, Ex.A15-Provisional Certificate issued by Annamalai University to the effect that deceased passed M.D.S. in Prosthodontics, Ex.A16-Registration extract of the sale deed dated 14.12.2007 executed by K.Surya Bharathi in favour of deceased for Rs.59,00,000/- in respect of a flat at Chennai, Ex.A17-Registration extract of sale deed dated 7.7.2008 executed by M. Harikrishna in favour of deceased for Rs.27,30,000/- in respect of a flat at Chennai, Ex.A18-Registration extract of sale deed dated 10.10.2008 executed by Hema Subba Rao in favour of deceased for Rs.14,00,000/- in respect of a flat at Chennai, Ex.A19-Registration extract of sale deed dated 4.5.2006 executed by T. Ravi

Kumar in favour of deceased for Rs.2,70,000/- in respect of Ac.4.07 cents of land at Muthukur, Nellore district, Ex.A20-Registration extract of sale deed dated 27.7.2006 executed by D. V. Krishna Prasad for Rs.3,10,000/- in respect of Ac.4.69 cents of land at Muthukur, Nellore district, Ex.A21-Registration extract of sale deed dated 26.8.2006 executed by B. Venkata Subbamma in favour of deceased for Rs.67,000/- in respect of Ac.1.00 of land in Muthukur, Nellore district, Ex.A22-Registration extract of sale deed dated 26.08.2006 executed by M. Somasekharaiah in favour of deceased for Rs.67,000/- in respect of Ac.1.00 of land in Muthukur, Nellore district, Ex.A23-Registration extract of sale deed dated 26.8.2006 executed by P. Brahmaiah, in favour of deceased, for Rs.1,37,000/- in respect of Ac.3.05 cents of land in Muthukur, Nellore district, and Ex.A24-Registration extract of sale deed dated 25.4.2008 executed by M. Dhilli Babu in favour of deceased for Rs.17,500/- in respect of Ac.0.13 cents of land; Ex.C1-Tax payment challan 1998-1999 Rs.486, Ex.C2-I.T.Acknowledgment for the year 1998-1999, Ex.C3-Tax paid challan for the year 1999-2000, Rs.5050/-, Ex.C4-I.T.Acknowledgment for the year 1999-2000, Ex.C5-Tax paid challan for the year 2000-2001 Rs.23,746/-, Ex.C6-Balance sheet and computation of tax for the year 2000-2001, Ex.C7-I.T.Acknowledgment for the year 2000-2001, Ex.C8-Tax paid challan for the year 2001-2002 Rs.20,500/-, Ex.C9-Advance tax challan for the year 2001-2002 Rs.15,000/-, Ex.C10-I.T.Acknowledgment for the year 2001-2002, Ex.C11-Computation & Balance sheet for the year 2001-2002, Ex.C12-Advance tax paid challan for the year 2002-2003 Rs.30,000/-, Ex.C13-Tax paid challan for the

year 2002-2003 Rs.1,099/-, Ex.C14-Income Tax assessment order for the year 2002-2003, Ex.C15-Income Tax assessment order for the year 2001-2002, Ex.C16-Tax paid challan for the year 2001-2002 Rs.2,908/-, Ex.C17-Income tax acknowledgment for the year 2002-2003, Ex.C18-Computation & balance sheet for the year 2002-2003, Ex.C19-Advance tax paid challan for the year 2003-2004 Rs.15,000/-, Ex.C20-Advance tax challan for the year 2003-2004 Rs.25,000/-, Ex.C21-Advance tax challan for the year 2004-2005 Rs.20,000/-, Ex.C22-Advance tax paid challan for the year 2004-2005 Rs.25,000/-, Ex.C23-I.T. acknowledgment for the year 2004-2005, Ex.C24-I.T.acknowledgment for the year 2005-2006, Ex.C25-I.T.acknowledgment for the year 2006-2007, Ex.C26-I.T.acknowledgment for the year 2007-2008, Ex.C27-Tax paid challan for the year 2007-2008 Rs.1,75,700/-, Ex.C28-Form-16, 2007-2008 with TDS amount Rs.21,300/-, Ex.C-29 Balance sheet for the year 2007-2008, Ex.C30-I.T.acknowledgment for the year 2008-2009 (Original) (already marked as Ex.C12), Ex.C31-I.T.acknowledgment for the year 2009-2010, Ex.C32-Tax paid challan for the year 2008-2009 Rs.1,75,030/-, Ex.C33-Tax paid challan for the year 2009-2010 Rs.85,070/-, Ex.C34-Income & expenditure account for the year 2009-2010, Ex.C35-Income & expenditure account for the year 2008-2009, Ex.C36-Tax computation for the year 2008-2009, Ex.C37-Tax computation for the year 2009-2010, Ex.C38-Tax challan for the year 2005-2006 Rs.25,000/-, Ex.C39-Tax computation and balance sheet for the year 2006-2007, Ex.C40-Balance sheet for the year 2005-2006, and Ex.C41-Computation and balance sheet for the year 2003-2004; Ex.X1-Attested photocopy of charge sheet filed in

Crime No.246/2009 and Ex.X2-Rough sketch of scene of offence in Crime No.246/2009.

12. On behalf of the New India Assurance Company, no oral evidence was adduced, but Ex.B1-true copy of insurance policy issued by the 2nd respondent in favour of 1st respondent in respect of the vehicle bearing registration No.AP-26-W-6989 valid from 13.2.2009 to 12.2.2010, was marked.

13. The 4th respondent-Sri Erramreddy Subba Reddy, father of the deceased, examined himself as RW 1.

14. The Tribunal recorded the finding that the accident took place because of negligence on the part of the driver of the lorry, the 1st respondent (80%) and there was also contributory negligence on the part of the deceased (20%). The Tribunal recorded that the claim petition was not vitiated for non-joinder of the driver of the offending lorry.

15. On the point of compensation, the claimants and 3rd respondent-mother of the deceased were held entitled for compensation of Rs.45,88,000/- in total together with interest @7.5% p.a. from the date of the petition to the date of realization. The claim of the 4th respondent-father of the deceased was rejected on the ground that he was not dependent of the deceased.

16. The Tribunal considered the age of the deceased as 40 years 3 months as per Exs.A10 (passport of the deceased) and Exs.C1 to C41 (IT acknowledgments) on which, the date of birth of the deceased was recorded as 14.02.1969. As per income tax returns and his remuneration taken as professor, the net income of the deceased was averagely taken as

Rs.6,00,000/- per annum. The Tribunal deducted 30% there from as income tax. The Tribunal added 30% towards future prospects on actual income and arrived at the income of the deceased per annum as Rs.5,46,000/-. 1/3rd deduction was made towards personal expenses of the deceased. It applied the multiplier of '15'. Thus, it determined Rs.3,64,000/- x 15 = Rs.54,60,000 per annum. It added Rs.1,00,000/- for loss of consortium to widow; Rs.1,00,000/- for loss of love and affection to son; Rs.25,000/- for funeral charges and Rs.50,000/- for loss of estate. Total came to Rs.57,35,000/-. The Tribunal deducted 20% as it held that the deceased contributed to that extent in causing the accident. Thus, the compensation payable at Rs.45,88,000/- was awarded with interest 7.5% p.a. from the date of claim petition till deposit or realization.

17. Thus, the Tribunal vide Award dated 03.12.2016 partly allowed the claim petition.

18. Challenging the Award dated 03.12.2016, as aforesaid, the New India Assurance Company filed MACMA No.750 of 2017. The claimants filed MACMA No.1774 of 2017 for enhancement of the compensation amount.

19. Learned counsel for New India Assurance Company Limited raised the following submissions;

i) that the driver of the offending vehicle was not made party. In the absence of the driver, the claim petition was not maintainable. The compensation could not be awarded holding the driver as negligent and fixing the liability of the owner for compensation to be paid by the New

India Assurance Company Limited. He placed reliance in ***Oriental Insurance Co. Ltd. v. Meena Variyal***[1] and ***New India Assurance Company Limited v. Margam Padmavathi***[2].

ii) that there was contributory negligence on the part of the deceased. The deceased was overtaking. It was head-on collision. The accident occurred in the middle of the road. Consequently, the contributory negligence to the extent of 50% should have been attributed to the deceased. The compensation awarded by the Tribunal deducting only 20% is not justified. The compensation amount, as determined, should have been reduced by 50%.

iii) that the Tribunal has applied multiplier of '15'. The age of the deceased as determined by the Tribunal was 40 years and 3 months. The deceased being above the age of 40 years, the multiplier of '14' was to be applied and not '15'.

20. Learned counsel for the respondents/claimants raised the following submissions;

i) that the driver was not a necessary party to be impleaded. Even if the driver was not impleaded, the claim petition would not be bad for non-joinder of necessary party nor could it be said that the compensation could not be awarded in the absence of the driver. He placed reliance on ***Machindranath Kernath Kasar v. D. S. Mylarappa***[3].

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[1] AIR 2007 SC 1609
[2] 2014 LawSuit (Hyd) 1049
[3] (2008) 13 SCC 198

ii) that there was no contributory negligence on the part of the deceased, not even 20% as determined by the Tribunal. The driver of the offending vehicle was on the extreme right of the road coming from the opposite direction, the entire negligence was of the lorry driver.

iii) that the multiplier as '15' has been correctly applied by the Tribunal considering that the deceased had not completed the age of 41 years, though he was aged of 40 years and 3 months. At that age group, the multiplier of '15' is appropriate multiplier.

iv) that the Tribunal legally erred in deducting the income tax @ 30%. He submitted that Exs.C1 to C41 are the income tax returns and based thereon he submitted that, the monthly income of the deceased as determined by the Tribunal i.e., Rs.50,000/- per month is on the lower side. The same should have been determined at Rs.75,000/- per month.

v) that the compensation amount is on the lower side which does not represent just and fair compensation and deserves to be enhanced.

vi) that the award of interest @7.5% is on lower side. It should be @9%.

21. In reply, learned counsel for New India Assurance Company Limited submitted that the Tribunal rightly discarded those income tax returns which were filed after the death of the deceased. The finding on income calls for no interference. He further submitted that 30% deduction of income tax is justified.

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

23. The following points arise for our consideration:

A. Whether the driver of the offending vehicle is necessary or proper party to be impleaded in the claim petition under Section 166 of Motor Vehicles Act? and whether for non-impleadment of the driver, the claim petition would not be maintainable?

B. Whether there was contributory negligence on the part of the deceased? and if so, to what extent, 20% as determined by the Tribunal or 50% as contended by the counsel for the New India Assurance Company Limited?

C. Whether the compensation awarded by the Tribunal represents just and fair compensation or it is inadequate or excessive? Under this point we would consider;

i) Whether the monthly income of the deceased has been rightly determined by the Tribunal or it requires re-determination? If so, what would be the monthly income of the deceased at the time of accident?

ii) Whether at the age of, above 40 years but below 41 years, the appropriate multiplier would be '15', as applied by the Tribunal or '14' as is the contention of the learned counsel for the New India Assurance Company Limited?

iii) What would be the percentage of 'future prospects' at the age of 40 years 3 months, as in this case?

iv) Whether the Tribunal is justified in deducting 30% income tax from the income of the deceased?

D. Whether the interest should be @9% p.a. instead of @7.5% p.a., as awarded by the Tribunal?

Point-A: (Driver necessary party or not)

24. In ***Meena Variyal*** (supra), the claim was filed by the claimants the legal representatives of the deceased employee, against the employer, the owner of the motor vehicle and against the insurance company. One Mahmood Hasan, who was allegedly driving the car and that too negligently, at the time of the accident, was not impleaded. No reason was given in the claim petition for his not being impleaded. The owner of the car, the company that employed the deceased, did not appear and did not file any written statement. The Insurance Company filed a written statement. It was pleaded by the insurance Company that the driver and the owner of the vehicle had colluded and the driver of the car had not been impleaded. It was also pleaded that the deceased himself was driving the vehicle. Hence he was not entitled to claim any compensation since the accident occurred on account of his own negligence. The vehicle was insured but there was no special contract to bring such deceased employee under coverage of the insurance policy. The Insurance Company had no liability. The Tribunal dismissed the claim. The claimants' appeal was allowed by the High Court. The Insurance Company approached the Hon'ble Supreme Court.

25. The Hon'ble Apex Court observed that ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, and when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. The Hon'ble Apex Court observed that therefore under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. With respect to that case, the Hon'ble Apex Court observed that the Tribunal ought to have directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. There, controversy was whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. The Hon'ble Apex Court observed that such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. The Hon'ble Apex Court held that by applying ***National Insurance Company v. Swaran Singh***[4] the Insurance Company could not be made liable to pay the compensation first and to recover it from the insured, the owner of the vehicle.

[4] (2004) 3 SCC 297

The deceased being an employee was not covered by the Workmen's Compensation Act, and only by entering into a special contract by the insured with the insurer, could such a person be brought under coverage. There was no case that there was any special contract in that case.

26. Paragraphs-10 & 11 of ***Meena Variyal*** (supra) is as under:

> "**10.** Before we proceed to consider the main aspect arising for decision in this appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. **Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver.** Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?

11. As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer Company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the Insurance Company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it."

27. In ***Meena Variyal*** (supra) there was dispute as to who was dirving the vehicle. Whether the driver or the deceased himself, who was the employee of the owner insured which required determination before making the

insurance company liable for payment of compensation against the insured, the owner, on account of his vicarious liability for the deriver. So, under that circumstance, it was observed that the Tribunal ought to have directed the claimant to implead the driver. The general principle as in ***Meena Variyal*** (supra) is that one would expect the driver to be impleaded before adjudication claim under Section 166 of the Motor Vehicles Act. The Hon'ble Apex Court in ***Meena Variyal*** (supra) has not laid down as a principle that in all the cases the driver has to be necessarily impleaded or that the driver in all the cases shall be a necessary party. It depends upon the facts of the case, whether the driver was required to be impleaded or not. In that case the driver ought to have been impleaded to demonstrate that the driver was driving the vehicle and not the deceased himself, as the deceased was the employee of the owner.

28. We are of the view that the owner/insurer is vicariously held liable, so it must be proved that his driver was driving where there is dispute, as to who was driving, the driver may have to be impleaded but where there is no such dispute, the driver shall not be necessary party to be impleaded though he may be impleaded in the claim petition. The facts of the present case are different. Firstly, it is not disputed that the driver of the offending vehicle was driving the offending vehicle. It is not the case that the deceased was driving the vehicle. Here, the deceased is the victim on the car. The question as to whether the driver of the offending vehicle was driving or not is not in issue. Secondly, even if the general principle that the driver is expected to be

impleaded is attracted, the non-impleadment would not result in the claim petition being not maintainable.

29. In ***Margam Padmavathi*** (supra), the High Court of Telangana and Andhra Pradesh (at Hyderabad), in the claim petition filed by the legal representatives of the deceased under Section 166 of the Motor Vehicles Act, in which the Tribunal awarded compensation, held that in the absence of driver, the claim petition was not maintainable. The matter was remanded to decide afresh after impleading the driver. Leaned single Judge in ***Margam Padmavathi*** (supra) referred to the judgment of the Hon'ble Apex Court in the case of ***Meena Variyal*** (supra) and held that the aforesaid judgment contained the general observations which were basically guidelines for all Tribunals to follow as law of the land, in particular, under Article 141 of the Constitution of India, to see that the impleadment of the driver of the crime vehicle is mandatory. It is for the reason that the accident claimed resulted in, due to the negligence of the driver, from the claim petition averments that is required to be proved by the claimants under Section 166 of the Motor Vehicles Act. It is only therefrom the owner of the vehicle is liable vicariously, to say the driver is the principal offender to fix liability vicariously on the owner and consequently for the insurer to indemnify the owner insured. Learned single Judge was of the view that it is the mandate of the law and the Court had no option but to remand the matter to impead the driver.

30. We are not in agreement with the view taken by the learned single Judge in ***Margam Padmavathi*** (supra). In our view, the Hon'ble Apex Court

in ***Meena Variyal*** (supra) did not say that in all the cases, the driver is necessary party to be impleaded. The facts of that case were different. There the dispute was if the deceased was driving the offending vehicle or the driver. In that case, it was observed that the judgment in ***Swaran Singh*** (supra) applies to the third party, and therefore, even if the driver had no valid licence, the owner shall be vicariously liable and to be indemnified by the insurer. The insured may after making payment may recover the same, but the said principle would not apply in case the deceased was the employee of the owner and was himself driving the offending vehicle. So, in ***Meena Variyal*** (supra), the question of liability was depending *inter alia,* upon who was driving the car and for such determination, the driver was said to be party which ought to have been impleaded. We would refer paragraph-29 of ***Meena Variyal*** (supra) from which it would be clear as to why in the said case the claim of the claimants was not allowed against the insurance company.

> "**29.** On the facts of this case, there is no finding that Mahmood Hasan, another employee of the owner was driving the vehicle. Even if he was, there is no finding of his negligence. The victim was the Regional Manager of the Company that owned the car. He was using the car given to him by the Company for use. Whether he is treated as the owner of the vehicle or as an employee, he is not covered by the insurance policy taken in terms of the Act—without any special contract—since there is no award under the Workmen's Compensation Act that is required to be satisfied by the insurer. In these circumstances, we hold that the appellant Insurance Company is not liable to indemnify the insured and is also not obliged to satisfy the award of the Tribunal/Court and then have recourse to the insured, the owner of the vehicle. The High Court was in error in modifying the award of the Tribunal in that regard."

31. A perusal of paragraph-29 of ***Meena Variyal*** (supra) makes it evident that the claim of the claimants therein was rejected not because the driver was not impleaded and so the claim petition was not maintainable.

32. In ***Margam Padmavathi*** (supra) the facts were not as were in ***Meena Variyal*** (supra). ***Margam Padmavathi*** (supra) is a case of claim by third party covered under the insurance policy. ***Meena Variyal*** (supra) is a case not by claimants/third party. The deceased employee therein was not covered under Workmen's Compensation Act nor under the insurance policy, i.e., without any special contract, that's why insurance company was held not liable to indemnify the owner, and not because, the driver was not made party.

33. In ***Fatima Bibi v. Union of India***[5] the claimants did not array the driver of the vehicle as party to the clam petition. It was observed that though in view of the provisions of Section 165 read with Section 166 of the Motor Vehicles Act, one comes to an inescapable conclusion that the claimants have to prove that the accident was out of the use of motor vehicle but the driver was not necessary party though a proper party. The High Court of Jammu & Kashmir in that regard referred to the judgment of the High Court of Karnataka in ***Patel Roadways v. Manish Chhotalal Thakkar***[6] wherein it was held that while there can be no doubt that impleading a driver will be appropriate, as he is a proper party, it cannot be said that he is a necessary party in a claim against the owner and insurer alone. It was further observed that any finding of

[5] 2012 SCC OnLine J&K 378
[6] 2001 ACJ 180 (Karnataka)

negligence of driver, recorded in a petition against the owner, or in a petition against the owner and insurer, without impleading driver, cannot be held to be an 'adverse' finding against the driver nor can it lead to any civil consequences against the driver. Such finding will be only for the purpose of fastening liability on the owner and not to fasten any liability on the driver. However, if the driver is impleaded and notice is issued to him, then civil consequences like making him personally liable will follow on recording a finding of negligence. The contention as raised in that case that claim petition was not maintainable in the absence of the driver of the car was not sustained and was rejected. In ***Fatima Bibi*** (supra), the High Court of Jammu & Kashmir held that the driver is a proper party, not a necessary party and the claim petition cannot be dismissed on the ground of non-arraying of driver as a party to the claim petition.

34. Paragraphs – 6, 8 and 9 of ***Fatima Bibi*** (supra) are reproduced as under:

> "**6.** Same question came up for consideration before the High Court of Karnataka in ***Patel Roadways*** **v.** ***Manish Chhotalal Thakkar*****, 2001 ACJ 180 (Karnataka) and it has been held that in the absence of a driver as a party, the claim petition cannot be dismissed.** It would be relevant to reproduce para 23 hereunder:
>
> "(23) But we do not find any support in *Biyabi's case*, 2001 ACJ 45 (Karnataka), for the appellant's contention that in the absence of driver as a party, a claim petition is liable to be dismissed as not maintainable or that no pending proceeding can go on, unless and until the driver is impleaded as a party. There is no such proposition in the said decision. It should be noticed that nowhere in Biyabi's this court has held that a claim petition is not maintainable

if the driver is not impleaded as party. All that the decision lays down is that no finding adverse to the driver can be recorded unless the driver is a party. It is however not possible to read more into the said decision or hold that in the absence of the driver, claim petition should be rejected. In fact in Biyabi's, this court did not dismiss the claim petition on the ground that driver was not a party. On the other hand, we find that on the facts and circumstances, as K.S.R.T.C. vehicles did not have insurance cover and as K.S.R.T.C. proposed to initiate action against erring drivers for negligence on the basis of finding of negligence recorded by the Tribunal, this court made it clear that no adverse finding can begiven nor action be taken against its drivers by K.S.R.T.C. for negligence unless the driver was a party to the claim proceedings; and therefore the matter was remitted to the Tribunal to serve a notice on the driver and then dispose of the matter. **The decision in Biyabi's is not therefore an authority for the proposition that no claim petition against the owner of a vehicle is maintainable without impleading the driver. Whether driver is to be impleaded or not is left to the discretion of the claimant. While there can be no doubt that impleading a driver will be appropriate, as he is a proper party, it cannot be said that he is a necessary party in a claim against the owner and insurer alone. Any finding of negligence of driver, recorded in a petition against the owner, or in a petition against the owner and insurer, without impleading driver, cannot be held to be an 'adverse' finding against the driver nor can it lead to any civil consequences against the driver. Such finding will be only for the purpose of fastening liability on the owner and not to fasten any liability on the driver.** However, if the driver is impleaded and notice is issued to him, then civil consequences like making him personally liable will follow on recording a finding of negligence. In the circumstances, the contention that claim petition is not maintainable in the absence of the driver of the car is liable to be rejected."

8. This court further held that the claim etition cannot be dismissed without egative driver as a party, para 22 whereof is produced herein:

"(22) Keeping in view the mandate of sections 165 and 166 of Motor Vehicles Act, 1988 and the object of awarding compensation, **I am of the**

considered view that driver is not a necessary party but a proper party. The claim petition can be filed and determined without arraying the driver as a party."

9. In the given circumstances, it is held that **the driver is a proper party, not a necessary party, and the claim petition cannot be dismissed on the ground of nonarraying of driver as a party to the claim petition**. Applying the test in the instant case, the impugned order is bad in law."

35. In ***Machindranath Kernath Kasar v. D.S.Mylarappa***[7] the appellant therein was driver of a bus belonging to Karnataka State Road Transport Corporation (KSRTC). While driving bus collision took place between the bus and a truck, large number of passengers travelling in the bus were injured. The appellant therein was also one of them. The passengers of the bus as also the appellant filed applications for payment of compensation before the Motor Accidents Claims Tribunal in terms of Section 166 of the Motor Vehicles Act. The appellant was also prosecuted for rash and negligent driving before a criminal Court. However, no such case was initiated against the driver of the truck. The Corporation denied and disputed the contention of the passengers that the appellant was driving the bus in a rash and negligent manner. The appellant therein had examined himself in the other claim petitions in support of the case of the Corporation. He, however, was not impleaded as a party therein. In the claim petitions, a finding of fact was arrived at that the appellant was driving the bus rashly and negligently. The claim petitions of the passengers were allowed. The correctness of those awards were not challenged. They attained finality. The Tribunal in the case of

[7] (2008) 13 SCC 198

the driver appellant also went into the question once again to hold that the accident was caused owing to the rash and negligent driving of the appellant. The Tribunal negatived the contention that it was the truck driver who was driving the truck rashly and negligently. The claim petition of the KSRTC driver, was dismissed. His appeal was also dismissed by the High Court. The appeal was dismissed observing that the appellant driver did not question the correctness of the earlier awards passed by the Tribunal although he was a party aggrieved and consequently, the driver was bound as regards to the question of negligence. The High Court had affirmed the view of the Tribunal. The KSRTC driver, approached the Hon'ble Apex Court.

36. The Hon'ble Apex Court considered the decision of the Division Bench of the Karnataka High Court in ***Patel Roadways*** (supra) which had opined that when the form of the claim petition did not require a claimant to even name the driver, a claim petition would be maintainable even without impleading the driver. It was also observed that the Kerala, Bombay, Madras, Allahabad, Patna, Punjab and Haryana and Delhi High Courts had taken the view that drivers are not necessary parties, whereas the Madhya Pradesh High Court had held that the driver of the offending vehicle would be a necessary party. In ***Patel Roadways*** (supra) the Karnataka Motor Vehicle Rules 1989, did not provide that driver would be a necessary party to be impleaded. In ***Machindranath Kernath Kasar*** (supra), the Hon'ble Apex Court observed that the Karnataka Rules were required to be construed having regard to the appropriate interpretative principles applicable thereto. Common law principles

were therefore required to be kept in mind. The Hon'ble Apex Court further observed that, in that case the Hon'ble Apex Court was not required to lay down a law that even in absence of any rule, impleadment of the driver would be imperative.

37. Paragraphs-25, 26 and 29 of ***Machindranath Kernath Kasar*** (supra) are as under:

> "**25.** Ms Suri submitted that the Act and the Rules as also the prescribed forms do not require the driver to be made a party and in that view of the matter, Rule 235 should be read disjunctively. Our attention in this behalf has been drawn to a decision of the Division Bench of the Karnataka High Court in *Patel Roadways* v. *Manish Chhotalal Thakkar* [ILR (2000) Kant 3286] .
>
> **26.** The learned Judges in *Patel Roadways* [ILR (2000) Kant 3286] opined that when the form of the claim petition does not require a claimant to even name the driver, a claim petition would be maintainable even without impleading the driver. The Bench proceeded to consider the general law of tort and the liability of joint tortfeasors as contained in various text books. The Bench also noticed the decision of this Court in *Minu B. Mehta* v. *Balkrishna Ramchandra Nayan* [(1977) 2 SCC 441 : AIR 1977 SC 1248] wherein it was held: (SCC pp. 451 & 453-54, paras 22 & 27)
>
> "*22.* The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the servant was acting during the course of his employment and that he was negligent.…
>
> ***
>
> *27.* This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to

the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of tort. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle on a public place without proof of negligence if accepted would lead to strange results."

The Kerala, Bombay, Madras, Allahabad, Patna, Punjab and Haryana and Delhi High Courts, on the one hand, noticing a large number of decisions held that drivers are not necessary parties, the Madhya Pradesh High Court, on the other hand, in *New India Assurance Co. Ltd.* v. *Munnidevi* [1993 ACJ 1066 (MP)] and *M.P. SRTC* v. *Vaijanti* [1995 ACJ 560 (MP)] held that the driver of the offending vehicle would be a necessary party. The Division Bench of the Karnataka High Court [ILR (2000) Kant 3286] further held that under the Madhya Pradesh Motor Vehicles Rules, the driver was required to be impleaded as a party. It was, however, stated:

"… We do not however agree with the said two decisions, if they were to be read as laying down a general principle that under law of tort, the master cannot be sued to enforce his vicarious liability for the negligence of the servant, without impleading the servant."

On the aforementioned finding, the following law was laid down:

"(*a*) Neither the Motor Vehicles Act nor the Rules thereunder require the driver to be impleaded as a party to the claim petition, (*b*) under law of tort, the owner and driver of the motor vehicle being joint tortfeasors, who are jointly and severally liable for the negligence of the driver, the claimant can sue either the owner or the driver or both. But, whether driver is impleaded or not, an owner (master) can be made vicariously liable for the acts of his driver (servant), only by proving negligence on the part of the driver (servant), (*c*)

therefore, a claim petition can be maintained against the owner and insurer of the vehicle causing the accident, without impleading the driver. However proving the negligence of the driver is a condition precedent to make the owner vicariously liable for the act of the driver, (*d*) but where the driver is not impleaded as a party, no decree or award can be made against him. A driver can be held liable personally only when he is impleaded as a party and notice of the proceedings is issued to him."

29. The Karnataka Rules, therefore, were required to be construed having regard to the appropriate interpretative principles applicable thereto. Common law principles were therefore required to be kept in mind. In this case, we are not required to lay down a law that even in absence of any rule, impleadment of the driver would be imperative."

38. So, at this stage, we would observe that in the said case, it has not been laid down by the Hon'ble Apex Court that in the absence of any rule, impleadment of driver would be imperative. It becomes so clear from paragraph-30 of ***Machindranath Kernath Kasar*** (supra) which is reproduced as under:

"**30.** It is, however, of some interest to note the provisions of Section 168 of the Motor Vehicles Act. In terms of this aforementioned provision, the Tribunal is mandatorily required to specify the amount which shall be paid by the owner or driver of the vehicle involved in the accident or by or any of them. As it is imperative on the part of the Tribunal to specify the amount payable inter alia by the driver of the vehicle, a fortiori he should be impleaded as a party in the proceeding. **He may not, however, be a necessary party in the sense that in his absence, the entire proceeding shall not be vitiated as the owner of the vehicle was a party in his capacity as a joint tortfeasor**."

39. Therefore, in the absence of any Rule, making it imperative to implead the driver, the driver will not be necessary party and in his absence,

the entire proceedings shall not be vitiated, if the owner of the vehicle is a party in his capacity as a joint tortfeasor. In the present case, under the Andhra Pradesh Motor Vehicles Rules 1989, (in short 'the Rules 1989'), there is no such legal provision for impleadment of driver as necessary party.

40. Rule 455 of the Rules 1989, reads as under:

> "**455. Applications**: Every application for payment of compensation made under Section 166 shall be made in Form C.I.D and shall be accompanied by the fee prescribed therefor in Rule 475.
>
> {Provided that, the application shall be accompanied by an affidavit stating that the petitioner has not filed any other claim petition regarding the same cause of action or same accident in the same Tribunal or any other Tribunal to his/her knowledge}"

41. Rule 455 of the Rules 1989, therefore, provides for application under Section 166 to be made in Form – C.I.D under the heading necessary particulars as given in the said Form at Sl.No.16 reads as under:

"16. Name and address of the vehicle."

"Form CID
Form of Application for compensation

(Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989)

The Motor Accidents Claims Tribunal

I,……..son/daughter/wife/widow of……residing at…….having been injured in motor vehicle accident hereby apply for the grant of compensation for the injury sustained. Necessary particulars in respect of the injury, vehicle, etc., are given below:-

I,……son/daughter/wife/widow of…….residing at…….hereby apply, as a legal representative/agent for the grant of compensation on account of death of

Sri/Kumari/Srimathi…….son/daughter/wife/widow of Sri/Srimati…….who died/was injured in a motor vehicle accident.

Necessary particulars in respect of the deceased/injured, the vehicle etc., are given below:

1. Name and father's name of the person injured/dead (husband's name in the case of married woman and widow).
2. Full address of the person injured/dead.
3. Age of the person injured/dead.
4. Occupation of the person injured/dead.
5. Name and address of the employer of the deceased, if any.
6. Monthly income of the person injured/dead.
7. Does the person in respect of whom compensation is claimed pay income-tax? If so, state the amount of income-tax (to be supported by documentary evidence).
8. Place, date and time of the accident.
9. Name and address of the police station in whose jurisdiction, the accident took place or was registered.
10. Was the person in respect of whom compensation is claimed travelling by the vehicle involved in the accident? If so, give the name of places of starting of journey and destination.
11. Nature of injuries sustained and continuing effect, if any, of the injury.
12. Name and address of the Medical Officer, Prractioner, if any who attended on the injured/dead.
13. Nature and period of the treatment and expenditure, if any incurred thereon (to be supported by documentary evidence).
14. Disability for work if any caused.
15. Registration number and the type of the vehicle involved in accident.
16. **Name and address of the vehicle.**
17. Name and address of the insurer of the vehicle.
18. Has any claim been lodged with the owner/insurer, and if so, with what result.
19. Whether the person injured had been involved in any other road accident earlier (in case he was, details of the accident should be set out).
20. Whether the person injured had preferred claim for damages in any case earlier, and if so, with what result.
21. Whether he is related to or has known defendant and if so, how?
22. Name and address of the applicant.
23. Relationship with the deceased.
24. Title to the property of the deceased.
25. Amount of compensation claimed.

    (i) For Special damages (particulars of loss and expenditure):

    Amount Rs.

    (a) Loss earnings from……..to…….
    (b) Partial loss of earnings from…….to…….at the net rate of Rs…….a day/week.
    (c) Transport to hospitals
    (d) Extra nourishment
    (e) Damages to clothing and articles.

(f) Others.

(ii) For general damages:

(a) Compensation for pain and suffering
(b) Compensation for continuing or permanent disability, if any.
(c) Compensation for the loss of earning power.

26. Any other information that may be necessary or helpful in the disposal of the claim.

I…….solemnly declare that the particulars given above are true and correct to the best of my knowledge.

Signature or thumb impression of the applicant"

42. From the aforesaid form, it is evident that it does not ask for even for the particulars in respect of the drivers.

43. Rule 473 of the Rules 1989 also reads as under:

"473. Code of Civil Procedure to apply in certain cases: - The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall so far as may be, apply to proceedings before the Claims Tribunal namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10, Order XVI, Rules 2 to 21; Order XVII and Order XXVIII, Rules 1 to 3."

44. A perusal of the aforesaid rule also shows that Order 1 Rule 10 CPC has not been made applicable to the proceedings before the Tribunal though some other provisions of CPC have been made applicable. Consequently, we are of the view that even as per the A.P.Motor Vehicle Rules, 1989 the driver is not a necessary party to the proceedings.

45. The Hon'ble Apex Court further observed that one must bifurcate the terms 'party' and 'necessary party'.

46. Part of para-40 of ***Machindranath Kernath Kasar*** (supra) is as under:

> "40…….Here, one must bifurcate the terms "party" and "necessary party". "Party" has been correctly defined by the High Court in the impugned judgment in terms of involvement in the proceedings regardless of formal impleadment. However, a necessary party has been defined in 5th Edn. of *Black's Law Dictionary* as follows:
>
> "In pleading and practice, those persons who must be joined in an action because, inter alia, complete relief cannot be given to those already parties without their joinder. Fed.R.Civil P. 19(*a*)"

47. What follows from the aforesaid judgment is that there is distinction between party and necessary party, in the first set of claim petition in ***Machindranath Kernath Kasar*** (supra), the driver of the bus was examined as witness and in the second set of claim petitions which was filed by the driver of the bus- the appellant, the truck driver was examined as party. In the said case, the Hon'ble Apex Court observed that they were party to the proceedings, they might not have been impleaded as party. In the present case, the driver of the offending vehicle has not been impleaded. But on that ground, we are of the view that it cannot be said that the claim petition was not maintainable, firstly, because there are no rules which make the impleadment of the driver as mandatory. Secondly, if the respondent-insurance company or the owner were of the view that the driver was not negligent they could have produced the driver in proceedings as witness. It would be not reasonable to expect to produce the driver of the offending vehicle, as witness, by the claimants of the deceased or by the injured claimant, so as to make him party to the

proceedings. We are of the further view that if the driver was not impleaded, any liability for payment of compensation might not be imposed on the driver, on the principle that he was not heard, as imposing the liability for payment on the driver may be in violation of the principles of natural justice, but on that count, it cannot be said that the owner would not be vicariously liable. The owner would still be vicariously liable for the negligent driving of the driver, which negligence, no doubt has to be proved. Here, the Tribunal has recorded the finding that the driver was rash and negligent in driving the vehicle based on material on record. The Insurance Company as well, therefore cannot be absolved of its liability for payment of compensation to indemnify the owner of the offending vehicle.

48. We need not proceed any further on this aspect. The reason is that a perusal of the memo of appeal shows that any such ground of non-impleadment of the driver, as also, non-maintainability of the claim petition without impleadment of the driver, has not been taken. Any application seeking permission to urge such ground during arguments has also not been filed. It is settled in law that Order 41 CPC applies to the appeals under Section 173 of the Motor Vehicles Act. In this respect, we may refer to the judgment of this Court in ***United India Insurance Co.Ltd. v. Susubelli Bapuji***[8] as under as in paragraphs No.40 to 46:

> "**40.** In *United India Insurance Company Limited* v. *Undamatla Varalakshmi*[10], this Court held that the appeal under Section 173 of Motor Vehicles Act, 1988 to the High Court, in the absence of different procedure

[8] 2024 SCC OnLine AP 3955

having been provided, either under the MV Act or the APMV Rules, 1989, and the applicability of Order 41 CPC also not having been excluded, in view of the judgment of the Hon'ble Apex Court in the case of *Sharanamma* v. *North East Karnataka RTC*, [11] the normal rules which apply to appeals before High Court, are applicable.

41. Para Nos. 12 to 21 in *United India Insurance Company Limited* (10th supra) reads as under:

12. The MV Act does not provide for the procedure for the appeals filed under Section 173 of the MV Act, though it provides for the Forum of the appeal i.e., the High Court.

13. The APMV Rules, 1989 also do not provide for the procedure to be followed by the High Courts in appeals under Section 173 of the MV Act.

14. Rule 473 of the APMV Rules, 1989 upon which reliance was placed, by the learned counsel for the appellant, provides as under:

*"**473. Code of Civil Procedure to apply in certain cases** : The following provisions of the First Schedule to the Civil Procedure Code, 1908 (Central Act 5 of 1908), shall so far as may be, apply to proceedings before the Claims Tribunal namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXVIII, Rules 1 to 3."*

15. A bare perusal of Rule 473 of APMV Rules, 1989 makes it evident that it provides for the applicability of certain provisions of the CPC, to the proceedings before the Claims Tribunal. The appeal under Section 173 of MV Act is not a proceeding before the Claims Tribunal, but before the High Court.

16. Consequently, the submission of the learned counsel for the appellant, based on Rule 473 of the APMV Rules, 1989 that since Order 41 CPC does not find mention in Rule 473, therefore it would not apply to appeals under Section 173 of MV Act, is misconceived.

17. Any other provision either under the MV Act or the APMV Rules, 1989 has not been brought to our notice, which excludes the applicability of the

Order 41 CPC to the appeals filed under Section 173 of the MV Act before the High Court.

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

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

*"**10. When an appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter shall be referred to as "the Act"), before the High Court, the normal rules which apply to appeals before the High Court are applicable to such an appeal also.** Even otherwise, it is well-settled position of law that when an appeal is provided for, the whole case is open before the appellate court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the appellate court to consider the entire case on facts and law."*

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

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

42. In *Uttar Pradesh State Road Transport Corporation* v. *Mamta*[12], the Hon'ble Apex Court held that an appeal under Section 173 MV Act is essentially in the nature of first appeal alike Section 96 CPC. It was further observed that the appellate judgment should satisfy the requirement of Order 20 Rule 4(2) r/w. Order 41 Rule 3 CPC.

43. Para Nos. 21 & 24 of *Mamta* (12th supra) are as under:—

"21. An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. (See National Insurance co. Ltd. *v.* Naresh Kumar *and* State of Punjab *v.* Navdeep Kaur)

24. As observed supra, as a first appellate Court, it was the duty of the High Court to have decided the appeal keeping in view the powers conferred on it by the statute. The impugned judgment also does not, in our opinion, satisfy the requirements of Order XX Rule 4 (2) read with Order XLI Rule 31 of the Code which requires that judgment shall contain a concise statement of the case, points for determination, decisions thereon and the reasons. It is for this reason, we are unable to uphold the impugned judgment of the High Court."

B. Order 41 Rule 2 CPC:

44. Order 41 Rule 2 CPC reads as under:

"2. Grounds which may be taken in appeal *- The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:*

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground."

45. In *Oriental Insurance Co. Ltd* v. *Sunitha Singh*[13], the Allahabad High Court on the scope of Order 41 Rule 2 CPC observed as under:

"……..For the reasons mentioned herein below and also agreeing with the view expressed by the Himachal Pradesh High Court in the case of Rahul Bhargava *(supra),* ***we are of the opinion that in this case such plea without any application seeking leave of the court under Order 41 Rule 2 and mentioning therein proper reasons for not raising this plea earlier should not***

be entertained. Further absence of this plea in the memorandum of appeal or in the written statement makes the matter worse for the appellant.

In view of above, we are not inclined to entertain the plea raised by the appellant regarding maintainability of the claim petition filed under Section 163A of 1988 Act."

46. We are of the view that the appellants are not entitled for any such ground being argued which is not taken in the memo of appeal. Any application seeking leave of the Court to take such ground, has also not been filed under Order 41 Rule 2 CPC. It is not open for the appellant to raise such submission……"

49. We hold that whether the driver is 'necessary party' to be impleaded in the claim petition depends on facts of particular case. Though the driver should be impleaded and it is always on the safer side to implead him as party, but his non-impleadment would not result in dismissal of the claim petition in all the cases. The entire proceedings cannot be said to be vitiated for the non-impleadment of the driver. If the owner is party and the negligence of the driver is proved, on evidence, the owner cannot escape it vicarious liability to compensate the victim nor the insurance company to indemnify the owner, however, subject to the fulfillment of policy conditions, and in the absence of the driver the claim petition cannot be said to be not maintainable.

Point 'B' Contributory Negligence:

50. On the point of contributory negligence, the Tribunal recorded that there was 80% contributory negligence on the part of the offending lorry and 20% on the part of the deceased. There was head-on collision. The deceased was overtaking another vehicle. He was in the middle of the road. As per the rough sketch also the deceased was shown in the middle of the road and the

offending vehicle coming from the opposite direction was shown towards its extreme right on the opposite direction. Consequently, we are of the view that there was contributory negligence on the part of the deceased. So far as the extent of contributory negligence is concerned, nothing has been pointed out from the material on record to determine the extent of contributory negligence. There is no formula, based on which the extent of contributory negligence can be determined, in this case, to the extent of 50% each as contended by the learned counsel for the Insurance Company. We find that the Tribunal is justified in observing 20% contributory negligence on the part of deceased as the driver of offending vehicle was on extreme right coming from the opposite direction and if he had not been on extreme right, the deceased might have been able to overtake. We are not inclined to interfere with the finding of the Tribunal on the point of contributory negligence and its extent of 20%. The view taken is a possible view and in the exercise of the appellate jurisdiction, this Court will not substitute any other view which may even if be possible, though we are not of that view.

51. In the exercise of the first appellate jurisdiction, this court is not inclined to interfere with the above finding, as it is well settled in law that if the Tribunal/court has taken a possible view based on material on record, the appellate court would be loath to interfere. In ***Sharanamma and others vs: Managing Director Divisional Contr.,- North-East Karnataka Road Transport Corporation***[9], the Hon'ble Apex Court has held as under:

[9] (2013) 11 SCC 517

"12. Generally, a finding of fact recorded by the Tribunal should not be interfered with in an appeal until and unless it is proved that glaring discrepancy or mistake had taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available record then as mentioned hereinabove, the High Court would not interfere in the appeal"

52. In ***Divl.Controller, KSRTC (NWKRTC) v. A.T.Mane(4)***[10] the Hon'ble Apex Court observed that once a domestic Tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

53. In ***West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesm Singh***[11] the Hon'ble Apex Court held as under:

"….In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal."

Point 'C': Just and fair compensation:

(i) Income of the Deceased:

54. We would now consider the point of income of the deceased.

55. The deceased was a Dental Surgeon and was working as Managing Director of Anjana Dental Care Private limited, T-Nagar, Chennai. Apart from that he worked as Associate Professor in Narayana Medical College Hospital,

[10] (2005) 3 SCC 254
[11] (2008) 3 SCC 729

Nellore and other reputed institutions. The monthly salary from Anjana Dental Care Private Limited was proved vide Ex.A11 in which it is Rs.50,000/- per month. The Tribunal on consideration of Ex.A11 certificate, as also Exs.C6, C10, C11, C17, C18, C24, C25, C26 and C41 the income tax returns for the assessment years 2000-2001 to 2007-2008 determined the annual income of the deceased as Rs.6,00,000/- i.e., Rs.50,000/- per month. The Tribunal rejected Ex.A12, Ex.C36 and Ex.C37 from consideration, on the ground that Ex.A12, Ex.C36 and Ex.C37 income tax returns for assessment years 2008-2009 and 2009-2010 were filed after the death of the deceased. In that regard, the Tribunal placed reliance in the case of ***V. Subbulakshmi v. S. Lakshmi***[12].

56. In ***Malarvizhi v. United India Insurance Co.Ltd.***[13] the Hon'ble Apex Court observed and held that the income tax return is a statutory document and can be considered as a valid piece of evidence to determine the actual income of the deceased. In ***Smt.Anjali v. Lokendra Rathod***[14] also the same view has been taken. Paragraph-9 in ***Smt.Anjali*** (supra) is as under:

> "**9.** The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. **This Court in *Malarvizhi* (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income.** In *Malarvizhi* (Supra), this Court has laid as under:

[12] (2008) 4 SCC 224
[13] (2020) 4 SCC 228
[14] 2022 LiveLaw (SC) 1012

"10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."

Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs. 1,18,261/-, approx. Rs. 9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010."

57. In ***V. Subbulakshmi*** (supra), the Hon'ble Apex Court expressed the opinion that in regard to the quantum of compensation awarded, the High Court had taken into consideration the relevant evidences brought before it. It was observed that the accident took place on 07.05.1997 and the income tax returns were filed on 23.06.1997. The income tax returns (Ex.P14) therefore, it was observed, was rightly not relied upon. Paragraphs 20 to 22 of ***V. Subbulakshmi*** (supra) are reproduced as under:

"**20.** So far as the question in regard to the quantum of compensation awarded in favour of the appellants is concerned, we are of the opinion that the High Court has taken into consideration all the relevant evidences brought on record.

21. The accident took place on 7-5-1997. Income tax returns were filed on 23-6-1997.

22. The income tax returns (Ext. P-14), therefore, have rightly not been relied upon."

58. In ***Oriental Insurance Co. Ltd. v. Ramilaben***[15] the Bombay High Court observed that the loss of income would have to be assessed on the basis of the Income Tax Returns filed during the lifetime of the deceased. In the said case, the income tax returns for the year 1999-2000 (Ex.31), upon which the

[15] 2017 (2) Mh.L.J 822

claimants therein relied, showed the net income as Rs.1,58,415/-. This was filed after the death of the deceased. As per the income tax return for the year 1998-99 filed during lifetime of the deceased, the net income was reflected as Rs.1,31,585/-. Referring to ***V. Subbulakshmi*** (supra) and other judgment of the Madhya Pradesh High Court; in ***Ramilaben*** (supra), the High Court of Bombay (Nagpur Bench) took into consideration the income as reflected in income tax return for the assessment year 1998-99, holding that the loss of income would have to be assessed on the basis of income tax returns filed during the lifetime of the deceased therein.

59. Paragraph-7 of ***Ramilaben*** (supra) is as under:

"7. As to Point No.1 : The question to be determined is with regard to loss of income to the claimants on account of death of Jayantilal. In support of the claim for compensation, the claimants had placed on record Income Tax Return for the year 1999-2000 at Exh.31, in which the net income was shown as Rs.1,58,415-00. Subsequently as per Exh.37, the Income Tax Returns for the years 1997-98 and 1998-99 were placed on record. It is not in dispute that the Income Tax Return for the year 1999-2000 dated 6th September, 1999 [Exh.31] was filed after the death of *Jayantilal. In V. Subbulakshi & ors*. [supra], the view taken by the High Court of not relying upon Income Tax Returns that were filed after the death of the victim while determining his income has been approved. Similar view has been taken by the Madhya Pradesh High Court in *Sutinder Pal Singh Arora, Suchitra Sinha & ors ., and Seema* & others [supra]. Considering the aforesaid position of law, the submission made on behalf of the appellant that the Income Tax Return for the year 1999-2000 ought to be excluded from consideration on the ground that the Return was filed after the death of Jayantilal deserves to be accepted. **Therefore, the loss of income would have to be assessed on the basis of the Income Tax Returns filed during the lifetime of Jayantilal**."

60. In ***Sutinder Pal Singh Arora v. Ashok Kumar Jain***[16] the High Court of Madhya Pradesh at Jabalpur, did not consider the income tax returns which were filed by the claimant after the death of the deceased, observing that they could not be taken into consideration as possibility of them being filed, inflating the income, could not be ruled out.

61. However, in ***Rajeshwariben WD/O Kalpeshbhai Shah v. Yunusbhai Isabbhai Sipai***[17] the High Court of Gujarat at Ahmedabad, referred to its previous judgment in ***National Insurance Company Limited v. Nishaben Pankajbhai***[18] in which it was observed that "*It is true that when the income tax return is filed after the accident, the same is required to be considered with more scrutiny and the reliability of such return may also be required to be tested. But at the same time, merely because return is filed at the later stage, such cannot be per se ground for discarding the evidence in toto.*"

62. Relevant part in paragraph 14.2 of ***Rajeshwariben*** (supra), reads as under:

> "14.2 In the case of *National Insurance Company Ltd. v. Nishaben Pankajbhai*, M/o Decd. Pankaj Shah reported in 2012 (0) GLHEL-HC 227573, this Court has held as under:
>
> "12. We have considered the contents of the income tax return and also the advance tax paid by the deceased during his lifetime for the respective year. The IT return for the accounting year of 1986-1987 (assessment year of 1987-

[16] 2003 SCC OnLine MP 640
[17] First Appeal No.579 of 2019 Dated 06.05.2022, HC of Gujarat
[18] 2015 (0) GLHEL-HC 227573

1988) was filed much prior to the accident and as per the said IT return, Rs.41000 was paid towards income tax as against income of approximately Rs.1,51,000. Therefore, if the tax payment is excluded, it could be about Rs.1,10,000 for the year 1986-1987. However, for the subsequent period, the accounting year of 1988-1989 (assessment year of 1989-1990), the advance tax paid by the deceased during his lifetime was Rs.30000, comparatively less than the earlier accounting year of 1986-87. In the same manner for the accounting year of 1989-1990 (the assessment year 1990-1991), the deceased during his lifetime paid the advance tax of Rs.25000 which was also less in comparison to the income tax paid during the accounting year 1986- 1987. **It is true that when the income tax return is filed after the accident, the same is required to be considered with more scrutiny and the reliability of such return may also be required to be tested. But at the same time, merely because return is filed at the later stage, such cannot be per se ground for discarding the evidence in toto……"**

63. In ***Harpreet Kaur v. Dharam Pal Singh***[19] also the Delhi High Court observed that the income tax returns filed after the death of a person cannot be taken into consideration for computing income of the deceased for the purpose of awarding compensation to his legal representatives cannot be said to be an inflexible or rigid rule of thumb. The Delhi High Court placed reliance on the income tax return which was filed after the death of the deceased.

64. Paragraph – 8 of ***Harpreet Kaur*** (supra) is reproduced as under:

"**8. While this Court is conscious of the fact that the Income-tax Returns filed after the death of a person cannot be taken into consideration for computing his income for the purpose of awarding compensation to his legal representatives, (See *V. Subbulakshmi* v. *S. Lakshmi*, 2008 ACJ 936),**

[19] 2011 SCC OnLine Del 3867

> **it cannot be said that this is not an inflexible or rigid rule of thumb. In a case, such as the present one where an advance tax of almost two lacs had been paid by the deceased during his lifetime, it would be absurd to believe that he would have paid the tax in anticipation of his own accidental death. Thus, I see no reason to disbelieve the income of the deceased as declared by him in the Assessment Year 1992-93**. I am fortified in coming to the aforesaid conclusion from the Assessment Order of the Income Tax Authority, which shows that as per the return of the income filed by the deceased on 31.12.1991, the income of the deceased for the Assessment Year 1991-92 as declared by him was Rs. 4,43,390/-. This declaration was, however, not accepted by the Income-tax Department, which assessed the taxable income of the deceased assessee to be Rs. 4,64,588/- under Section 143(3) of the Income-tax Act, 1961."

65. In ***Rukmani Jethani v. Gopal Singh***[20] the income tax returns for the year 2004-2005 marked as Exhibit 12 was not taken into consideration by the Tribunal on the ground that it was filed after the death of deceased. The Hon'ble Apex Court considered the income tax return filed after the date of accident by observing that the Motor Accidents Claims Tribunal committed an error in not taking into account the income tax return filed on behalf of the deceased for the financial year 2004-2005. Paragraph-9 of ***Rukmani Jethani*** (supra) reads as under:

> "**9.** After careful consideration of the submissions made on behalf of the parties, we are of the opinion that **the MACT committed an error in not taking into account the ITR filed on behalf of the deceased for the Financial Year 2004-2005. Taking into account the ITR filed on behalf of the deceased for the Financial Year 2004-2005, we hold** that the appellants are entitled for an amount of Rs. 8,40,735/- towards compensation on the basis

[20] 2021 SCC OnLine SC 3496

of yearly income of the deceased applying the multiplier of 15. Insofar as loss of future prospects is concerned, we are in agreement with the learned counsel for Respondent No. 3 that the calculation should be based on 25% of the established income and not 30%. The appellants are entitled to Rs. 2,52,213/- towards 'loss of future prospects'. In respect of compensation to the family members for 'loss of love and affection, deprivation of protection, social security etc.', we are of the opinion that the appellants are entitled to Rs. 90,000/- (Rs. 15,000/- each to six members of the family). The widow of the deceased is entitled to Rs. 40,000/- towards compensation for 'loss of love and affection, pains and sufferings, loss of consortium, deprivation of protection, social security etc.' Further, the appellants are also entitled to Rs. 25,000/- towards funeral and ritual expenses. In all, the appellants are entitled for payment of compensation amounting to Rs. 12,47,948/- (Rupees twelve lakh forty seven thousand nine hundred forty eight only)."

66. In ***T. Savithramma v. K. Venkateswarlu***[21] this Court took into consideration and relied upon Exs.A8 and A9 therein which were the income tax returns filed after the death of the deceased, recording the reasons that the deductions towards income tax had already been made during the life time, and those returns were accepted by the income tax department, which were proved by PW 3 therein by the income tax officer. In the said case, this Court observed that the possibility of showing the gross income of the deceased in income tax returns filed after the death for the purpose of getting huge compensation was merely on apprehension expressed by the Tribunal without any foundation and particularly, when the tax was deducted at source in the lifetime of the deceased.

67. Paragraphs-30 and 31 of ***T. Savithramma*** (supra) read as under:

[21] 2024 SCC OnLine AP 3868

"**30.** We are of the view that the computation of the income of the deceased should be made based on Income Tax returns, in the present case also on Exs.A8 and A9, even if they were filed after the death of the deceased, as the deductions had already been made during his life time and as those returns were accepted by the Income Tax Department as proved by P.W.3-Income Tax Officer.

31. We find that the respondents 1 and 2 in the claim petition were set ex parte. No oral evidence was reported by the 3rd respondent-United Insurance Company. So, there was no evidence contrary to the evidence of P.W.3, who proved the documents that the income tax returns Exs.A.8 and A.9. In the absence of any contrary evidence as also in the presence of all these documentary evidence Exs.A.8 and A.9 duly proved by P.W.3 that they were accepted by the income tax department, in our view, there was no reason for the Tribunal to have not relied upon Exs.A.8 and A.9 to determine the income i.e., I.T.Rs. These documents Exs.A.8 and A.9 in our view are reliable evidence to determine the income of the deceased. The reason given by the Tribunal that there was no material placed by the petitioners to corroborate the work in progress in terms of money mentioned in Exs.A.8 and A.9 and consequently it was not placing reliance thereon is unsustainable. Once Exs.A.8 and A.9 were accepted by the income tax department and the TDS was deducted during the life time of the deceased, the approach of the Tribunal in rejecting Exs.A.8 and A.9 for determination of the income on the ground that they were filed after the death is legally unsustainable. So far as the view expressed by the Tribunal that in Exs.A.8 and A.9, the net income of the deceased was shown as Rs. 12,24,450/- and Rs. 15,13,875/- respectively and consequently there was possibility of showing an exaggerated income of the deceased in Exs.A.8 and A.9, after the death of the deceased for the purpose of getting huge compensation is merely an apprehension, expressed by the Tribunal without any foundation and specifically when the TDS was deducted in the life time of the deceased. The Tribunal ought not to have drawn such inference."

68. However, in ***Tankawsala Lakshmi v. D. Tirumalarao***[22] this Court did not place reliance on the income tax returns which were filed after the death of the deceased in support of the contention raised therein that there was income from the agriculture as well. The reasons were recorded that in the income tax returns filed during the life time of the deceased, the agriculture income shown was only Rs.21,000/- whereas in the income tax return which were filed after the death of deceased the income on agriculture was exorbitantly shown to the tune of Rs.1,80,000/-. In view of the other evidence on record and the case of the claimants therein being that there was no agricultural land, except the land which was given on lease and the lease had already come to an end near to the date of death of the deceased, this Court took the view that the income tax return filed after the death of the deceased could not be placed reliance.

69. On consideration of the aforesaid judgments, we are of the considered view that;

i) the income tax return is a statutory document. It is the best evidence to determine the gross and net income of the deceased for the purposes of determination of compensation;

ii) the income tax return filed after the death of the deceased cannot be rejected or ignored in all cases, merely because it was filed after the death of the deceased.

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[22] MACMA.2906 of 2012, APHC
Decided on 20.09.2024

iii) The income tax returns filed after the death of the deceased can be relied upon at least, to illustrate;

a) in cases, where the deceased paid the advance tax or it was deducted during his lifetime, and he dies before filing income tax returns, if the Court is satisfied that the income tax return so filed is near to the tax deducted/advance tax paid or in proportion thereto;

b) in cases where there was no exorbitant increase or the income shown was in close proximity with the previous income tax returns, may be with reasonable increase;

c) in such other cases, where the Court is satisfied, on evidence, that the income tax return though filed after death, represents the true income and is not with the motive to file the same for claiming exorbitant compensation;

iv) the income tax returns filed after the death of the deceased require, closer and deeper scrutiny, considering the previous income tax returns filed during the lifetime, if any, or/and the other evidence on record;

70. Coming to the present case, the income of the deceased in Exs.C1 to C41, the income tax returns and tax payment receipts of the deceased, show that in the assessment years from 2000-2001 up to 2009-2010, the following is the position of the gross income, net taxable and the actual income:

Sl. No.	Assessment Year	Gross Total Income	Net Tax Payable	Actual Annual Income
1.	1998-1999	43,000/-	300/-	42,700/-

	(C-2)			
2.	1999-2000 (C-4)	74,647/-	3,930/-	70,717/-
3.	2000-2001 (C-7)	1,50,014/-	18,968/-	1,31,046/-
4.	2001-2002 (C-10)	2,00,748/-	34,180/-	1,31,846/-
5.	2002-2003 (C-17)	3,17,136/-	68,902/-	2,48,234/-
6.	2003-2004 (C-41)	6,84,100/-	-	6,84,100/-
7.	2004-2005 (C-23)	4,99,504/-	1,23,187/-	3,76,317/-
8.	2005-2006 (C-24)	5,67,367/-	1,41,994/-	4,25,373/-
9.	2006-2007 (C-25)	4,15,114/-	64,417/-	3,50,697/-
10.	2007-2008 (C-26)	8,55,161/-	2,12,156/-	6,43,005/-
11.	2008-2009 (C-30)	6,43,125/-	1,46,347/-	4,96,778/-
12.	2009-2010 (C-31)	7,06,740/-	1,24,297/-	5,82,443/-

71. From the aforesaid table it is evident that in the assessment year 2003-2004 the income of the deceased was Rs.6,84,100/-, in the assessment year 2007-2008 the annual income was Rs.8,55,161/-. Consequently, in our view, the income tax returns for the assessment year 2008-2009 and 2009-2010 in which the annual income of the deceased was shown as Rs.6,43,125/- and Rs.7,06,740/- respectively, in no way can be said to be exorbitant and it can also not be said that such income tax return having been filed by the claimants after the death of the deceased, were for the purpose of claiming compensation and were liable to be rejected. Such income tax returns show that the annual income in 2008-2009 is less than as shown in 2004-2005. Similarly, the annual income shown in 2009-2010 is less than the income as shown in income tax returns for the assessment year 2007-2008. As such, the

income shown in the assessment years 2008-2009 and 2009-2010 income tax returns could not be rejected merely on the ground that those income tax returns were filed after the death of the deceased. We shall consider the income tax returns for 2008-2009 and 2009-2010 as well for the aforesaid reasons.

72. So, considered, the average annual net income of last 3 years comes to Rs.6,43,005/- + Rs.4,96,778/- + Rs.5,82,443/- = Rs.17,22,226/- / 3 = Rs.5,74,075/-.

73. The Tribunal has determined the annual income as Rs.6,00,000/-. It then deducted 30% towards income tax. So, according to the Tribunal for computation of compensation, in fact, the net income of Rs.4,20,000/- per annum has been taken. The said finding is not correct and is set aside.

74. Accordingly, we hold that the annual net income of the deceased was Rs.5,74,075/- after deduction of income tax, for computation of compensation.

(ii) Multiplier:

75. So far as the multiplier is concerned, the Tribunal has applied the multiplier of '15'. Learned counsel for the Insurance company contended that the deceased was aged of 40 years three months. Consequently, he being above the age of 40, the multiplier applied as '15' is not correct, the appropriate multiplier is '14'.

76. In so far as the age of the deceased is concerned, there is no dispute. At the time of death of deceased, age of the deceased was 40 years 3

months, which was recorded based on Exs.A10 passport of the deceased. The question is, if the deceased was aged 40 years and 3 months he is to be considered as of 41 years.

77. In ***Sarla Verma Vs Delhi Transport Corporation and Another,***[23] the Hon'ble Apex Court applied***Kerala SRTC v. Susamma Thomas***,[24] ***U.P. SRTC v. Trilok Chandra***[25] and***New India Assurance Co. Ltd. v. Charlie***[26]and determined the appropriate multiplier for their respective age groups as under in paragraph-42;

> "42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above , which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

78. In ***P.O.Meera v. Ananda P. Naik***[27] the High Court of Kerala at Ernakulam observed that the table in ***Sarla Verma*** (supra) leaves no room for any speculation that it is only when the deceased/injured completes the age of 51 years, (as there age of the deceased was 50 years but had not completed 51 years) the multiplier would shift from '13' to '11' and not when the deceased/injured attains the age of 50 years and runs the said age till the previous night of his 51st birthday.

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[23] (2009) 6 Supreme Court Cases 121
[24] (1994) 2 SCC 176
[25] (1996) 4 SCC 362
[26] (2005) 10 SCC 720
[27] 2022 SCC OnLine Ker 546

79. From the aforesaid judgment, it is evident that so far as the multiplier is concerned, appropriate multiplier as per the completed age, is determined as to in what age group the deceased/injured falls. For example, if the age of 40 years has been completed but not 41 years, the person would not fall within the age group of 41 to 50 because he would be below 41 years. The view taken is that a person who has not completed, as in that case 51 years, but had completed 50 years, he would fall within the age group of 41 to 50. Following the above principle, we are of the view that as the age of deceased was 40 years and 3 months, he completed 40 years, but not 41 years. He would fall under the age group of 36 to 40, but not under the age group of 41 to 50. Consequently, the multiplier of '15' as applied by the Tribunal is the correct multiplier, in accordance with law as declared in ***Sarla Verma*** (supra).

(iii) Future Prospects:

80. However, with respect to grant of future prospects, the age group as given in ***National Insurance Co.Ltd. v. Pranay Sethi***[28] is different. It is not the same as the age group in ***Sarla Verma*** (supra) for the purpose of choosing the multiplier. So, the age group is, firstly below 40 years then 40 to 50 and thereafter 50 to 60. The deceased having attained the age of 40 years, he cannot be said to be below the age of 40 years. He would be above the age of 40 years and would fall within the age group of 40 to 50. Consequently, he would not be entitled for the future prospects @ 30% as granted by the Tribunal. The deceased was private dentist and consequently, applying

[28] (2017) 16 SCC 680

Pranay Sethi (supra) in para No.59.4, the future prospects would be @25% and not 30% as awarded by the Tribunal.

81. Paragraphs-59.3, and 59.4 of ***Pranay Sethi*** (supra) are as under:

> "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."

82. Accordingly, we grant future prospects @25% on the income, determined by us.

(iv) Income tax deduction:

83. The Tribunal has deducted 30% income while determining the monthly income of the deceased. We have taken the annual net income as shown in income tax returns for last three assessment years i.e., after taking the deduction of income made from the gross income. Consequently, we had taken the net income. Any further deduction towards income tax is not called for. The Tribunal considered the gross salary as Rs.6,00,000/- annually and thereafter deducted the income tax @ 30%. We find that the view taken by the Tribunal is not correct. In the presence of income tax returns, the

deduction of income tax made as per the income tax returns is to be taken as the correct deductions and as per the applicable slabs. We are not oblivious of the fact that, the slab might be different for deduction of tax, but before us, there is nothing to show that the tax deduction was not as per the slab applicable at that time. In ***M/s.ICICI Lombard General Insurance Co.Ltd. v. Dasari Nagalakshmi***[29] a coordinate Bench of this Court observed on the point of deduction of income tax as per the slab applicable from time to time in different financial years that certain exemptions like HRA, Transport allowance, medical reimbursements, Home loans / study loans etc., are provided under the Income Tax Act. In that scenario, it would be difficult to visualize the amount of tax payable by the deceased as a lot of it would depend on the tax planning and exemptions claimed by the individual. So, we go by the actual deductions made of income tax as per the income tax returns.

Point 'C':

84. Thus, on the point of just compensation, in our view the claimants are entitled for the following compensation:

1.	Net income (Average income for Assessment Years 2007-2008, 2008-2009 & 2009-2010)	Rs.5,74,075-00
2.	Future prospects @ 25% of the income	Rs.1,43,518-00
	Total: (i.e.,1+2)	Rs.7,17,593-00
3.	Deduction of 1/3rd towards personal expenditure	Rs.4,78,395-00 ps

[29] MACMA.36 of 2024, APHC, Decided on 18.12.2023

	Rs.7,17,593-00 – (1/3rd) 2,39,197-00=	
4.	Applying multiplier '15' at the age of 40 years (Rs.4,78,395.00 x 15)	**Rs.71,75,937-00**
5.	**Conventional Head: Non-pecuniary:**	
	i) Loss of Consortium Rs.48,400/- x 3	**Rs. 1,45,200-00**
	ii) Loss of Estate	**Rs. 18,150-00**
	iii)Funeral expenses	**Rs. 18,150-00**
6.	**Total:**	**Rs.73,57,437-00**
7.	**Contributory Negligence of 20% deducted**	**Rs.14,71,487-00**
8.	**Total: Compensation: (Rupees fifty eight lakh eighty five thousand nine hundred fifty only)**	**Rs.58,85,950-00**

Point 'D':

85. The Tribunal granted interest at the rate of @ 7.5% p.a. In ***Kumari Kiran vs. Sajjan Singh and others,***[30] the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @ 6% as also the judgment of the High Court awarding interest @7.5% and awarded interest @ 9% p.a. from the date of the claim petition. In ***Rahul Sharma & Another vs. National Insurance Company Limited and Others,***[31]the Hon'ble Apex Court awarded @ 9% interest p.a. from the date of the claim petition. Also, in ***Kirthi and another vs. Oriental Insurance Company Limited,***[32] the Apex Court allowed interest @ 9% p.a.

[30] (2015) 1 SCC 539
[31] (2021) 6 SCC 188
[32] (2021) 2 SCC 166

86. Thus, considered, the compensation as awarded by the Tribunal is enhanced from Rs.45,88,000/- to Rs.58,85,950/- together with interest @ 9% per annum from the date of claim petition till deposit / realization.

87. The New India Assurance Company Limited shall make the payment by depositing the amount in total as per this judgment, after adjusting the amount if any already deposited / paid, before the Tribunal, within 4 (four) weeks from today.

88. The claimants, including the mother of the deceased, shall be allowed to withdraw the compensation amount with interest in the proportion, in terms of the award of the Tribunal. Claimant is the mother of the deceased and the 3rd respondent in the present appeal. The father of the deceased is the 4th respondent. The Tribunal awarded the compensation amount to the mother. It held that the father of the deceased was not the dependent. Consequently, no compensation was assessed for him.

Result:

89. In the result,

(i) MACMA No. 1774 of 2017 by claimants is allowed, enhancing the compensation amount, and with directions hereunder, with costs throughout in their favour.

(ii) MACMA No.750 of 2017 by the New India Assurance Company Limited 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 thereon @9% per annum from the date of claim petition till deposit in Tribunal;

(iv) The New India Assurance Company Limited shall deposit the amount as aforesaid in paras-84 & 86 after adjusting the amount already deposited/paid, if any, before the Tribunal, failing which, the amount shall be recovered, as per law;

(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.

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RAVI NATH TILHARI, J

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NYAPATHY VIJAY, J

Date: 04.10.2024
Dsr
Note:
LR copy to be marked
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