
(2005) 04 AP CK 0028
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1515 of 1997

A. Vijaya and Others	Vs	APPELLANT
Vegurla Rajaiah and Others		RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, Order 6 Rule 17
Motor Vehicles Act, 1988 — Section 140, 163A, 166, 166(1), 167
Penal Code, 1860 (IPC) — Section 337

Citation : (2005) 4 ACC 622 : (2006) ACJ 1371 : (2005) 4 ALD 725 : (2005) 4 ALT 487

Hon'ble Judges : B. Seshasayana Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : B. Narayan Reddy, for the Appellant; Kota Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Civil Miscellaneous Appeal is directed against the judgment dated 31 -3-1997 passed in O.P. No. 257 of 1996 on the file of Motor Vehicle Accidents Claims Tribunal-cum-III Additional District and Sessions Judge, Karimnagar, whereby the learned Tribunal allowed the petition filed by the claimants u/s 166(1)(c) of Motor Vehicles Act, 1988 (for short Act) and awarded compensation of Rs. 9,86,799/- with interest @ 12 per cent from the date of petition till the date of realization.

2. The appellants are claimants in O.P. No. 257 of 1996. They put in a claim of Rs. 15.0 lakhs as compensation for the loss of life of Ganga Rao in a road accident occurred on 22-3-1996. R-1 is driver, R-2 is owner and R-3 is the insurer of the tractor bearing No. AP 15 T 8074 involved in the accident. The appellants/claimants filed C.M.P. No. 24576 of 1999 under Order 6 Rule 17 CPC whereby sought for enhancement of their claim from Rs. 15.00 lakhs to Rs. 30.00 lakhs. They also filed C.M.P. No. 25575 of 1999 to declare appellant No. 3 as major and

discharge her mother as a guardian. Both the applications came to be allowed on 18-12-1999. The appellants/ claimants paid requisite court fee on the enhancement amount sought for.

3. The factual matrix of the case leading to filing of this Civil Miscellaneous Appeal by the claimants is:

Claimant No. 1 is wife, claimant No. 2 is son and claimant No. 3 is daughter and claimant No. 4 is father of Ganga Rao. Claimant No. 4-Raghupathi Rao died pending the appeal.

Ganga Rao was a Branch Manager, State Bank of Hyderabad, Sultanabad Branch. He joined in bank service as a clerk on 30-9-1969. He was promoted as J.M.I, on 24-3-1980, M.M.G.S-II on 1-8-1988 and M.M.G.S.-III on 1-12-1994. On 22-3-1996 at about 8 P.M. he along with his two colleagues namely P.W.3-G. Dhanunjaya and P.W.4-J. Srinivas Rao left the Bank to go to Karimnagar by bus. When they reached P.W.D. road near the bus station, a tractor driven by R-1 came in high speed and in a rash and negligent manner and dashed Ganga Rao. As a result he fell down and sustained serious injuries on his head and legs. He was shifted to District Headquarters hospital at Karimnagar. A case in Crime No. 32/96 u/s 337 IPC came to be registered against R-1 for his rash and negligent driving. Ganga Rao succumbed to injuries on the same day while undergoing treatment in the hospital and consequently the section of law came to be altered from Section 337 IPC to 304-A, IPC. Ganga Rao was aged 49 years (49 years 10 months and 25 days) at the time of his death and was drawing a monthly salary of Rs. 14,500/-. According to the claimants, though they are entitled for compensation of more than Rs. 25.00 lakhs, they restricted their claim to Rs. 15.00 lakhs on all counts. R-1 being the driver, R-2 being the owner and R-3 being the insurer of the crime vehicle are liable to pay the compensation jointly and severally.

4. R-1 and R-3 filed counters resisting the claim of the claimants. R-2 filed memo adopting the counter of R-1. The plea of R-1 and R-2 was that the tractor bearing No. AP 15 T 8704 did not involve in accident and whereas the plea of R-3 was that the driver of the crime vehicle had no valid driving licence and the claim made by the claimants is highly excessive and exorbitant. Learned Tribunal formulated the following issues for trial:

(1) Whether the deceased. A Ganga Rao died owing to the rash and negligent driving of the tractor bearing No. AP 15 T 9704 by its driver-R-1?

(2) Whether the petitioners are entitled to compensation and if so, to what amount and from whom?

(3) To what relief?

The claimants examined 6 witnesses and proved 13 documents and whereas respondents examined two witnesses and proved four documents in support of their respective contentions. The learned Tribunal on considering the material

brought on record and on hearing counsel for the parties, held that the accident occurred due to rash and negligent driving of R-1 and that the claimants are entitled to compensation of Rs. 9,86,799/- with interest @ 12 per cent from the date of petition till the date of realization. It further held that R-1 to R-3 being the driver, owner and the insurer of the crime vehicle are liable to pay the compensation jointly and severally. Dissatisfied with the quantum of amount of compensation, claimants have filed this appeal.

5. Sri. S. Rainer Rao, learned counsel appearing for the appellants/claimants submits that the learned Tribunal did not take into account the promotional aspects of the deceased and thereby erred in taking the multiplicand as Rs. 9,664.64 paise. He further submits that the multiplier as per II schedule of the M.V. Act, 1988 as amended in 1994 for a person aged 49 years is 13 and therefore the learned Tribunal ought to have taken 13 as multiplier to arrive at the total loss of dependency. His further submission is that the Tribunal has not properly appreciated the evidence of P.W.5 who has candidly stated that the deceased was due for promotion to the cadre of SMGS-IV on 1-12-1999 and was due to retire in the year 2006 and that he was entitled to two stagnation increments apart from hike in pay revision by 15 per cent every five years as per the agreement between the management and the employees of the Bank. In support of his submissions reliance has been placed on the decision of the Supreme Court in

(1) General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

(2) U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,

(3) Patricia Jean Mahajan and Others Vs. United India Insurance Co. Ltd. and Others, .

(4) United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., .

(5) Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, .

(6) Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, .

(7) Smt. Supe Dei and Others Vs. National Insurance Co. Ltd. and Another,

(8) Rattan Lal Mehta Vs. Rajinder Kapoor, .

(9) National Insurance Co. Ltd. Vs. Muneer, .

(10) Jyoti Kaul and Ors. v. State of M.P. and Anr. 2002 (6) ALT 61 (SC).

and the decisions of our High Court in

(11) Y. Sivarama Sastri and another Vs. Nayeem Khan and others, .

(12) Susheela and Others Vs. Ahmad Bi and Others,

(13) K. Matura Bai and Others Vs. A. Shiva Nageswar Rao and Others, .

6. Kota Subba Rao, learned counsel appearing for R-3 submits that the structured table in the second schedule of M.V. Act, 1988 can be made applicable if a person invokes the provision of Section 163-A and the multiplier mentioned in the structured table has no application in case of claims filed u/s 166 of M.V. Act, 1988 even if the accident occurred after coming into force of the said provision by the amendment Act No. 54 of 1994. He also submits that the multiplier applied by the Tribunal is on high side and therefore enhancement of the multiplier in the circumstances of the case is unwarranted. He would further submits that the evidence brought on record is wholly insufficient to speculate future promotions of the deceased with certainty in which case the award passed by the trial court is legal and proper and the same is not required to be interfered in this appeal. In nutshell, his submission is that the award granted by the Tribunal is just and proper and the same is not required to be interfered in this appeal. To buttress his submissions reliance has been placed on various observations made by Supreme Court and this court in the decisions referred by the counsel appearing on behalf of the claimants. Apart from placing reliance on some of the observations made in the decisions referred to above, he also placed reliance on the decisions of Supreme Court and our High Court and they are:-

(1) The Divisional Controller, KSRTC v. Mahadeva Shetty and Anr. 2003 (1) DT (SC) 662.

(2) M.P. State Road Transport Corporation Bairagarh, Bhopal v. Sudhakai, 1977 ACJ 290.

(3) Oriental Insurance Co. Limited Vs. G. Seshamma and Others, .

(4) APSRTC v. Shafiya Khatoon, 1985 ACJ 212 (A.P.) (D.B.).

(5) United India Insurance Co. Ltd. v. G. Vjayalakshmi, 1990 ACJ 560.

(6) United India Insurance Company Limited, Tirupati Branch, Tirupati Vs. Mokkalala Chandramma and Others, .

(7) United India Insurance Company Limited and Another Vs. Dandugula Bheem Bai @ Bheemakka and Others, .

(8) Deepal Girishbhai Soni v. United India Insurance Co. Ltd, 2004 ACJ 934 (SC).

(9) Asha and Others Vs. United India Insurance Co. Ltd. and Another, .

7. The learned Tribunal, as stated above, has formulated three issues for consideration. The first issue relates to the cause of the accident, the second issue relates to the quantum of compensation and the third issue relates to the nature of relief to be granted. Since the appeal is by the claimants dissatisfied

with the quantum of amount, no discussion need be made with regard to the issue of negligence. The only issue that survives in the appeal whether the compensation awarded to the claimants by the learned tribunal is inadequate or needs to be enhanced and if so to what extent?

8. Before dwelling on the rival contentions we would like to put on record the averments made by the claimants in the O.P. with regard to the quantum of amount. Para 4 of the O.P. reads as under:

"The deceased was aged 49 years at the time of his death and was working as Manager of the sulthanabad Branch of the State Bank of Hyderabad and was getting a monthly salary of Rs. 14,500/-. He was maintaining his family by spending all his earnings. He was quite healthy and did not had any bad habits. But for his untimely death due to the accident, the deceased would have lived for more than twenty five years and would have earned lakhs of rupees. He was a very hard working officer and would have got promotions and increase in salary. Due to the untimely death of the deceased, the Petitioner No. 1 lost her husband and the Petitioner No. 2 and 3 have lost their beloved father. Due to the death of the deceased, the petitioners suffered great mental shock and agony and the future of the petitioners has been ruined. The Petitioners No. 2 and 3 are still unmarried. If the deceased was alive, he would have performed their marriages in respectable families. The Petitioners were totally dependent upon the income of the deceased and now after his death have no other source of income. The deceased had nine more years of service and would have earned more than Rs. 25,00,000/- in the remaining period of his service. But the petitioners are claiming only a sum of Rs. 15,00,000/- on all counts towards compensation."

The first claimant while examining as P.W.1 stated on oath that she filed O.P. claiming compensation of Rs. 15.00 lakhs. The second claimant while being examined as P. W.2 has stated on oath that the O.P. has been filed claiming compensation of Rs. 15.00 lakhs. It is only during the pendency of the appeal they moved CM.P. seeking enhancement of their claim from Rs. 15.00 lakhs to Rs. 30.00 lakhs. It is not clear from the record as to what made them to boost up their claim when the matter is pending in appeal. Be that as it may, the Tribunals are expected to award just and proper compensation. What is just and proper compensation depends upon the facts of each case. The discretion given to the Tribunals in awarding compensation has to be exercised judiciously and not arbitrarily.

9. Broadly speaking, in the case of death, basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation: but amount recoverable

depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded.

10. The purpose for compensation to dependents of the victims is that they may not be suddenly deprived of the sources of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation, but in cases where the amount of compensation may go much higher than the amount providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. The intention is not to over compensate.

11. In fixing the compensation the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefits and on the other any pecuniary advantage which from whatever source comes to them by reason of death. It is also to be borne in mind that the courts should not allow misfortune to be turned into wind fall. In *State of Haryana and Another Vs. Jasbir Kaur and Others*, , the Supreme Court considered the words just and reasonable occurring in Sections 168 and 167 of M.V. Act, 1988 in determination of compensation and held that just and reasonable compensation does not mean a bonanza or a sources of profit to the victim of the accident. It is useful to refer para 7 of the cited judgment and it is thus:

"(7) It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza: not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just compensation, which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

12. It is no more in dispute that deceased-Ganga Rao was a Branch Manager in the cadre of Scale III Officer in SBH, Sultanabad, as on the date of the accident. It is also not in dispute that he was aged about 50 years by the date of his death. Ex.A-6 is the salary certificate of the deceased. He was drawing basic pay of Rs. 9,700/-, DA of Rs. 905/-, HRA of Rs. 924.50 paise. In the salary certificate PF contribution made by the employer has been shown as income. In our opinion, the contribution made by the employer towards PF cannot be treated as income. The salary certificate does not indicate the statutory deductions such as profession tax, his contribution towards P.F. Learned Tribunal has taken the salary of the deceased at Rs. 14,496.96 paise out of which a sum of Rs. 4,832.00 towards his personal expenses has been deducted and his contribution to the family has been assessed at Rs. 9,664.64 paise.

13. Much argument has been advanced by learned counsel appearing for the appellants/claimants placing reliance on various decisions of Supreme Court that future prospects of the deceased were to be taken into consideration while assessing his monthly earnings and resultantly his contribution to the family goes up considerably. He refers to the evidence of P.W.5 with regard to the future prospects of promotion of the deceased, had he been alive. P.W.5 admits in his cross-examination that there is no assurance of the deceased getting further promotions and it would depend upon various factors such as performance of the deceased in the interview Board. For better appreciation we may refer the cross-examination of P.W.5 in his own words and it is thus:

"Ex.A-7 contains the signature of M.B. Chary, who is the Manager (Personal) of S.B.H., Zonal Office, Warangal he is authorised to issue Ex.A-7. The designation of the said M.B. Chary is not containing in Ex.A-9. As on the date of issual of the Ex.A-9 M.anantha Subramanyan, Deputy General Manager. The said signature of the Anantha Subramanyan, is not found in Ex.A-7. The appointment letter issued to the deceased dt. 22 September, 1969. But he joined in service oh 10th September, 1969. There is no hard and fast rule to give promotion to the deceased, if he appeared before the Interview Board, he may be selected for further promotions. There are no adverse remarks to the deceased from the date of entry into service till his death. After the death of the deceased, we gave appointment to his son on compassionate grounds. It is not true to say that Ex.A-7 is a false certificate and is not prepared by me."

14. P.W.6 is an Income Tax practitioner. He speaks of Ex.A-11 tax returns in respect of the deceased. He admits that the tax liability of the deceased for the accounting year 1995-96 was Rs. 22,226/-. It is explicit from his evidence that the deceased was an Income Tax assessee and he paid an amount of Rs. 22,296/- towards income tax for the accounting year 1995-96. Even if the deceased was alive, he would not have pocketed the entire pay and he should have necessarily parted with some amount towards income tax, profession tax etc. A Division Bench of our High Court in APSRTC v. Shafiya Khatoon (17 supra) had an occasion to consider the incidences of income tax while arriving at the

annual income of the deceased. The observations made by the Division Bench in para 39 of the judgment need to be noted and it is thus:

"39. We shall now proceed to deal with the computation of the "annual dependency" which is the multiplicand. Start with the deceased's net income at the date of his death, estimate how much of this he spent on himself, and then, if his pattern of life justifies the assumption, take the remainder as his net income and as being spent for the benefit of his dependents (Kemp and Kemp 4th Edn., 1975, Vol.1, pp. 235-236). In *Adsett v. West*, 1984 AC J 495 (QBD, England), McCullough J, pointed out that customary calculations and estimates which have been made for many years in cases under the Fatal Accidents Act reveal that the deceased would roughly have spent only about a third or less of his income upon himself. In our view, this may even vary between 35% to 50%. Further if the deceased's income is high enough, his liability to income tax must be taken into account in arriving at his net "annual income" (*British Transport Corporation v. Gourley* 1956 AC 185)."

15. A fact which requires to be taken note of is that the son of the deceased was given employment on compassionate grounds. This fact is spoken by P.W.5 and the same is not controverted by the appellants/claimants.

16. It has been consistently held by the Supreme Court in catena of decisions that this multiplier method is logically sound and legally well established as compared to other methods. It emerges from the decisions of Supreme Court referred above that the court must adhere to the system of multiplier in arriving the proper amount of compensation and also with a view to maintain uniformity and certainty.

17. In fatal accident cases the multiplicand is arrived at by compounding the annual loss to the dependents. For this purpose annual income of the deceased is compounded and deductions for his personal expenses is made which depending upon the facts of the case may range from V3 to V2, the resultant figure is called the "basic figure" or "data" which has to be multiplied by the appropriate multiplier to arrive at the loss of future earnings.

18. As per Ex.A-6 salary certificate, the total monthly emoluments of the deceased were Rs. 14,499.96 paise. Admittedly, the deceased was an income tax assessee and an amount of Rs. 22,226/- was paid by him towards income tax for the accounting year 1995-96. Approximately the tax liability of the deceased per month comes to Rs. 1,852/-. If the tax liability of the deceased is deducted from his monthly earnings, the carry home income comes to Rs. 12,647.96 paise. It has been held by the Supreme Court in *Asha v. United India Insurance Co. Ltd.* (22 supra) that the claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. It is useful to refer to para 8 of the cited judgment and it is thus:

"8. Lastly, it was submitted that the salary certificate shows that the salary of the

deceased was Rs. 8,632. It was submitted that the High Court was wrong in taking the salary to be Rs. 6,642. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards L.I.C., society charges and H.B.A., etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

If 1/3rd of it is deducted towards personal expenses, his contribution to the family comes to Rs. 8,432/-. The Tribunal has taken loss of dependency to the claimants at Rs. 9,664.64 paise per month. The very fact that the learned Tribunal has taken loss of dependency on somewhat higher side, it takes care of future prospects, even if any, had the deceased been alive.

19. The next question is what is the multiplier to be applied to arrive at the total loss of dependency. The trial court has taken 8.25 multiplicand (sic. multiplier) keeping in view the age of the deceased. Learned counsel appearing for the appellants/ claimants submits that the multiplier as per the structured formulae in the second schedule appended to the Act for the victim aged about 45 years but not exceeding 50 years is 13. As the deceased was aged about 49 years, the total loss of dependency is to be assessed by applying 13 multiplier. He placed reliance on judgments of Supreme Court and our High Court referred to above. It suffices to refer paras 67 and 68 of the decision of Supreme Court in *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.* (21 supra), which reads as under:

"(67) WE, therefore, are of the opinion that *The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc.*, has correctly been decided. However, we do not agree with the findings in *Kodala (supra)* that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the act.

(68) However, in this case, we may notice that the parties have proceeded to file two applications - one, u/s 163-A and another u/s 166 of the Act. Both have been entertained. Both the Tribunal as also the High Court have proceeded on the basis that the amount of compensation u/s 163-A is by way of an interim award and the same would not preclude the claimants to proceed with his claim made in terms of Section 166 of the Act. It is submitted at the Bar that the appellants have withdrawn 50% Of the amount and rest of the amount has been invested. The appellants have lost both of their parents in the accident. Only one of the appellants at the relevant time was a major. It appears that 70% of the amount permitted to be withdrawn has been deposited in the Fixed Deposit. We

agree with the submission of Mr. Banerjee that the claim of the appellants made u/s 163-A be treated to be one u/s 140 of the Act and upon adjusting the amounts provided for thereunder, the appellants may refund the rest thereof to the insurer."

20. The scheme as envisaged u/s 163-A leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any other provision providing set-off against higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered thereunder whereas Section 140 and 166 ensured to all sections of the Society.

21. In *Jyoti Kaul and Others Vs. State of M.P. and Another*, the Supreme Court referring to the decision of the case in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.)* (1 supra) reiterated that the multiplier system should be applied for the purpose of calculation of amount of compensation. It has also been observed that the question as to what multiplier should be applied would depend upon the various facts and circumstances of the case, hence the multiplier may change to some degree.

22. The second schedule while prescribing the multiplier, had maximum income of Rs. 40,000/- per annum in mind, but in cases where the gap in income is so wide as in the present case, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible.

23. In *Nirmala Narsava v. Vilas Ramachandra Shangda* 1989 ACJ 715 (A.P.) (D.B.) a Division bench of our High Court held that choosing the multiplier on the basis of age of the deceased at the time of his death from the annuity tables referred to in *Bhagwandas Vs. Mohd. Arif*, ; *Bhagwandas Vs. Mohd. Arif*, with necessary adjustment is preferable.

24. It is contended by learned counsel for the appellants/claimants that the annuity table referred to in *Bhagwandas Vs. Mohd. Arif*, : *Bhagwandas Vs. Mohd. Arif*, , has become out-dated by long lapse of time and therefore the multiplier given in the structured formulae in second schedule appended to the Act should alone be considered in choosing the appropriate multiplier. We have indicated in the above paras of the judgment that the structured formulae in the second schedule had the maximum income of Rs. 40,000/- per annum in mind and in case of higher income, the multiplier given in column No. 2 of the structured formulae can only be a guidance.

25. Indeed this question came up for consideration before the Division Bench of our High Court in *Oriental Insurance Co. Ltd v. G. Sesharnma* (16 supra) wherein it is held as follows:

"4. The Seamed counsel for the respondents further submitted at the Bar that the deduction of 1/3rd income towards personal expenses of the deceased is always not advisable. It can be even less than 1/3rd. We are not in agreement with the submission made by the learned counsel for the respondents. It has been the practice in all the reported cases that 1/3rd income is to be deducted for the expenses of the deceased while computing the compensation payable to the legal representatives of the deceased. The learned counsel for the respondents further submitted that the multiplier used by the Tribunal is correct. In order to substantiate his contention, he relied upon a ruling reported in APSRTC, Mushirabad, Hyd. Vs. Patan Shamshad Begum and others, , in which the Division Bench of this Court was pleased to hold that the Claims Tribunal has power to apply the reasonable and relevant multiplier in determining compensation under the head "loss of dependency" unlike in mathematical calculations depending upon the facts of each case. We agree with the principle laid down by the Division bench of this Court. But the learned Standing Counsel appearing for the appellant could not place any material on record, which would weigh in our minds to apply the higher multiplier than the table of multiplier given in Bhagwan Das v. Mohd. Arif a case reported in Bhagwandas Vs. Mohd. Arif, . The learned counsel further relied upon a ruling reported in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, in which their Lordships held that Second Schedule suffers from several defects, courts and tribunals cannot go by the ready reckoner. It can only be used as a guide. Therefore, the learned counsel submitted that the Second Schedule can be used in finding the appropriate multiplier.

5. The learned counsel further relied upon a ruling reported in APSRTC Vs. Salvaraj Vijaya and others, , and submitted at the Bar that in fact the claimants are entitled for more compensation even without filing the cross-objections. The learned counsel further submitted at the Bar that this Court while exercising the jurisdiction under Order 41 Rule 33 CPC can enhance the compensation. We are not in agreement with the view expressed by the learned single Judge in the above ruling. As a matter of fact, though the Court has all powers to pass any decree or to make any order which ought to have been passed and made by the original court but this can only be done if the claimants filed cross-objections and not otherwise.

6. Now we proceed to scrutinize as to whether the submission made by the learned Standing Counsel for the" appellant has any legal force?

7. We rely upon a ruling reported in Bhagwan Das v. Mohd. Arif. The deceased was aged between 45 to 50 and the multiplier given for 45 years -10.45 and for 5-years -7.68. In the said ruling His Lordship further held that in computing the multiplier for persons, who like professionals, can earn for all their lives and there is no retirement, the multiplier from the table can be increased approximated by 1 or 2 points. Therefore, we choose appropriate multiplier in this case as 12 instead of 13 as used by the Tribunal. Therefore, we hold that the

deceased was earning Rs. 17,165/- p.m. deducting 1/3rd towards the personal expenses of the deceased, Rs. 11,443/- will be dependency per month and Rs. 1,37,316/- p.a. and the multiplier which we have chosen is 12. If the aforesaid figure is multiplier with 12, then the loss of dependency comes to Rs. 16,47,792/-. In addition to the above amount, the claimants are entitled to Rs. 12,000/- towards loss of consortium, Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate, making a total of Rs. 16,47,792/- plus interest at the rate of 9% p.a. from the date of petition till the date of realization."

26. A Division Bench of our High Court in *United India Insurance Co. Ltd. v. Mukkala Chandramma* (19 supra) also considered the annuity tables referred to in *Bhagwan Das's* case (26 supra) and agreed with the proposition of law made therein. It is useful to refer para 13 of the judgment and it is thus:

"13. The learned counsel Mr. K.L.N. Rao appearing on behalf of the appellant herein submitted that the Bar that if the petition is filed u/s 166 of the Motor Vehicles Act, then the Schedule given in *Bhagwan Das v. Mohd. Arif's* case has to be applied. We agree with the proposition made by the learned counsel for the appellant herein. By reading the entire ruling, it is seen that the Hon'ble Sri Justice M. Jagannadha Rao (as he then was) considered all the aspects in the matter and gave the Schedule in the judgment, which is more on scientific basis. Therefore, we have no hesitation in holding that *Bhagwan's* case is applicable to the present set of facts. If once this principle is accepted, then the correct multiplier to be applied is six. Thus, in the present case the dependency can be worked out to Rs. 9,50,400/- as against a sum of Rs. 16,51,400/- awarded. In addition to this amount, the claimants are entitled to Rs. 15,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate. Thus, the claimants-respondents herein are entitled to Rs. 9,50,400 + 30,000/- : Rs. 9,80,400/- plus interest at the rate of 9% p.a from the date of the petition till realization of the entire amount. The apportionment and the withdrawal of the amounts have to be worked out as given by the Tribunal."

27. Learned counsel appearing for the appellants/claimants by placing reliance on the judgment of the learned single Judge of our High Court in *Smt. A. Lakshmi Vs. Arjun Associated Pvt. Ltd. and Another*, , contends that even in cases arising u/s 168 of M. V. Act, 1988 compensation can be fixed on the basis of structured formulae in the second schedule of the Act. We have gone through the judgment of the learned single Judge. The ultimate conclusion arrived at by the learned single Judge is structured formulae can be taken as a necessary assistance and guidance in arriving at the compensation even in cases that are to be decided u/s 168 of M.V. Act. It is nowhere held that the multiplier mentioned in column No. 2 of the structured formulae is made to be applicable strictly even in cases where the annual income of the victim is more than Rs. 40,000/-. Therefore, we do not see any substance in the contention of the learned counsel for the appellants/claimants. The Supreme Court has repeatedly held that the

structured formulae in the second schedule appended to the Act is only for those whose annual income is upto Rs. 40,000/- and all other claims are required to be determined in terms of Chapter XII of the Act. In case of higher income the prescribed multiplier in column No. 2 of the structured formulae of the second schedule is only a guidance.

28. The deceased was aged about 50 years as on the date of the accident. The proper multiplier as per the decision reported in Bhagwan Das's case (26 supra) is 7.68. The Tribunal has adopted the multiplier as 8.25 keeping in view various factors of the case. Therefore, the multiplier adopted by the Tribunal is not required to be disturbed. The learned Tribunal has properly assessed the total loss of dependency to the claimants at Rs. 9,86,799/- with interest @ 12 per cent from the date of petition till the date of realization. We see no valid ground to enhance the loss of dependency.

29. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed with costs confirming the judgment dated 31-3-1997 passed in O.P. No. 257 of 1996 on the file of Motor Vehicle Accidents Claims Tribunal-cum-III Additional District and Sessions Judge, Karimnagar.