
(2009) 07 MAD CK 0528
In the Madras High Court
Case No : C.M.A. (MP) No. 898 of 2008

Abdul Rahim and another	Vs	APPELLANT
Sundaresan and another		RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) ACJ 2197

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : K.K. Ramakrishnan for Mr. V. Bharathidasan, for the Appellant; Uma Ramanathan and Mr. S. Vellaichamy, for the Respondent

Final Decision : Allowed

Judgement

Kirubakaran, J.—This civil miscellaneous appeal has been preferred by the claimants against the award of Rs. 20,000 as against the claim of Rs. 1,50,000, for the death of one A. Nazir Jinnah.

2. The case of the claimants is that, when the deceased Nazir Jinnah was riding his tricycle from Kappalur to Thirumangalam on 16.7.2000 from north to south, an Ambassador car bearing registration No. TXV 2179 driven by its driver in a rash and negligent manner hit against the tricycle and due to that impact, the deceased sustained fracture and multiple injuries. especially in the head. Initially he was taken to Government Hospital, Thirumangalam and after giving first aid, he was admitted in Government Rajaji Hospital, Madurai and took treatment till 5.8.2000. After that, he was readmitted in Vadipatti Government Hospital and subsequently, he succumbed to the injuries. Though the claim petition was filed by the victim on 16.8.2000, the victim died on 14.11.2000. Thereafter, amendment petition was filed by the parents of the deceased contending that the victim had died because of the injuries sustained by him in the accident. The

claim petition was contested by the insurance company by filing the counter statement.

3. No counter affidavit was filed by the insurance company opposing the amendment and as a result the amendment petition was allowed on 29.3.2002. No additional counter statement was filed by insurance company, respondent No. 2, after amendment. The claim of the parents was that the deceased was working in a bakery and was earning about Rs. 3,000 per month. Though they valued their loss at Rs. 2,86,000, they restricted their claim to Rs. 1,50,000.

4. Before the Tribunal the father of the deceased examined himself as PW 1 along with PWs 2 to 4 and marked the following documents:

- (1) First information report, Exh. P1.
- (2) O.P. note book of the Government Rajaji Hospital, Exh. P2.
- (3) O.P. record of Vadipatti Government Hospital, Exh. P3.
- (4) O.P. record of Vadipatti Government Hospital, Exh. P4.
- (5) Death certificate, Exh. P5.
- (6) Medical records for having taken treatment, Exh. P6.
- (7) Medical records for having taken treatment from 7.9.2000 to 18.9.2000, Exh. P7.
- (8) Discharge summary, Exh. P8.

On the side of the respondents, no witness has been examined nor any document was marked.

5. Learned counsel for the appellants relied upon the evidence of PW 3, who attended and gave treatment to the deceased in Government Rajaji Hospital and he specifically relied upon the following portion of PW 3's evidence:

(Omitted as in vernacular)

Relying on the said piece of evidence of PW 3, the counsel for the appellants submitted that the victim sustained injuries in the brain and there was blood clot throughout the brain. When the blood clot spread throughout the brain, as stated by PW 3, it was the cause for the death of the victim.

6. Learned counsel also relied upon various authorities to drive home the points as if any injury is caused in the brain, that will create harm to the person and death could occur, even after long interval. In this connection, he relied upon Modi's Textbook of Medical Jurisprudence and Toxicology, 19th Edn. In Chapter XII -Regional Injuries - Head, it is stated as follows:

Wounds of the scalp usually heal rapidly though in rare cases fatal results may follow from the supervention of infection, or suppuration may set in, and spread

into the brain through the blood vessels or through necrosis of the bone resulting from infection, or through an unnoticed fissured fracture. Thus, cases have occurred in which scalp wounds have apparently healed, and yet death has occurred from septic meningitis or brain abscess after a few days or weeks.

(Emphasis added)

By relying upon the said para, the counsel convincingly argued that the wound which would appear to be healed, still would cause harm to any human being. In this case, all the parts of the brain were affected as stated by PW 3, whose testimony was not rebutted by bringing a competent neurologist by the respondents.

7. Mr. K.K. Ramakrishnan, the learned counsel for the appellants, has taken pain to refer a number of books on medical literature and quoted important portions which are essential for arriving at a conclusion in this matter. He relied upon the book *The Essentials of Forensic Medicine and Toxicology* by Dr. K.S. Narayan Reddy, Chapter 6: Death and its Cause, wherein it is stated as follows:

Cause of death: The cause of death is the disease or injury responsible for starting the sequence of events, which are brief or prolonged and which produce death. It may be divided into:

(1) Immediate cause: At the time of terminal event, e.g., bronchopneumonia, peritonitis, trauma, etc.

(2) Basic cause: Pathological process responsible for the death at the time of the terminal event or prior to or leading to the event, e.g., gunshot wound of abdomen complicated by generalised peritonitis

(3) Contributory cause: Pathological process involved in or complicating, but not causing the terminal event. In some cases, the basic and the immediate cause may be identical.

8. He also referred Black's Law Dictionary to define what is meant by cause:

Causa causans--The immediate cause; the last link in the chain of causation.

Causa sine qua non--A necessary cause; a cause without which the thing cannot be or the event could not be or the event could not have occurred. See but-for cause under Cause.

Cause, n.1. Something that precedes and brings about an effect or result (the cause of accident) But-for cause. The cause without which the event could not have occurred--Also termed actual cause; cause in fact; factual cause. Proximate cause. 1. Cause that is legally sufficient to result in liability. 2. A cause that directly produces an event and without which the event would not have occurred--Also termed direct cause; direct and proximate cause; efficient proximate cause; efficient cause; efficient adequate cause; legal cause; procuring cause; producing cause, primary cause; jural cause.

9. The learned counsel also relied upon the decision of Delhi High Court in Klaus Mittelbachert Vs. East India Hotels Ltd., , wherein it is stated as follows:

(128) In Words & Phrases, Permanent Edn., Vol. 21 at p. 448, "injury causing death" has been defined as under:

If an employee but for an injury would not have died at the time at which and in the way in which he did die the accident though it merely hastened a deep-seated disorder is regarded as resulting in an "injury causing death" within the Workmen's Compensation Act.

(129) "Death resulting from injury" has been defined in Vol. 11, pages 46-47, (CAPP) *ibid* as follows:

Death resulting from an injury... covers cases in which an injury aggravates or accelerates an existing condition so that death ensues earlier than it would in the ordinary course, even though the existing condition would have ultimately resulted fatally.

(130) In *Pigney v. Pointers Transport Services Ltd.*, (1952) 2 All ER 807, relying on *In re: Polemis & Furnace*, (1921) 3 KB 560 at 577, Lord Pitcher has said: "if death is directly traceable to the injury in the accident for which the defendants are responsible, the chain of causation is not broken.

(131) In plain words, if an injury hastens or accelerates the death, directly and not remotely, then in law the injury is one causing or resulting in death.

By relying upon those paras, the learned counsel for the appellants submitted that any injury which forms the nucleus resulting in a death has to be taken as cause for the death.

10. He also relied upon Ratanlal & Dhirajlal's Law of Torts to speak about the connection between the act and the death. From the Chapter "Damages", he relied on the following para:

1(B) Causation

If the damage alleged was not caused by the defendant's wrongful act the question of its remoteness will not arise. In deciding the question whether the damage was caused by the wrongful act, the generally accepted test is known as "but for" test. This means that if the damage would not have resulted but for the defendant's wrongful act, it would be taken to have been caused by the wrongful act. Conversely, it means that defendant's wrongful act is not a cause of the damage if the same would have happened just the same, wrongful act or no wrongful act. Thus when a doctor is negligent in failing to see and examine a patient and give him the proper treatment, the claim will still fail if it is shown on evidence that the patient would have died of poisoning even if he had been treated with all due care. The doctor's negligence in such cases is not the cause of the patient's death.

11. He quoted another judgment of the Hon''ble Supreme Court in *Ramathal v. Managing Director, Cheran Transport Corporation*, (2003) 10 SCC 53 . In that case, the deceased was originally injured on 14.1.1991 and was hospitalised for one week and subsequently, he was discharged from the hospital. Thereafter, after one year he died on 26.2.1992. Originally, the victim filed the claim for compensation. Since he subsequently died, the dependants filed amendment application and sought for a sum of Rs. 5,33,000 as compensation. The Tribunal awarded Rs. 3,59,508. On appeal, this court reduced the compensation to Rs. 76,000. The claimants therein preferred appeal before the Hon''ble Apex Court and the Supreme Court enhanced the compensation to Rs. 2,00,000. While reversing the judgment of the High Court, the Hon''ble Supreme Court in para 15 of the judgment stated as follows:

(15) Unfortunately, the High Court did not discuss the materials on record in detail. It is not in dispute that deceased was an indoor patient from 14.1.1991 to 21.1.91. He thereafter was being treated in the Government Hospital, Palladam, He died there. The medical certificate shows that the cause of the death was due to primary disease hypoxic encephalopathy and the immediate cause of death was due to cardiorespiratory arrest. The doctor examined on behalf of the claimants categorically stated that the accident might have been the cause of death of the deceased. The respondent did not bring any material on record to show that there was no link between the accident and the death. The finding of the High Court that there was no proper medical treatment and, therefore, cause of death is not attributable to the accident does not appear to be based on any material on record. In any event, it cannot be said to be the correct approach adopted by the High Court, particularly when the Tribunal on the basis of the materials brought on record by the parties came to a contrary finding. No strong and cogent reason has been assigned by the High Court in support of its judgment reversing the findings of the Tribunal. It accepted the submission made on behalf of the respondent herein without analysing the materials and without arriving at a clear finding of fact.

12. By relying upon the decision, Mr. K.K. Ramakrishnan submitted that even for the death, which occurred after one year, the Hon''ble Supreme Court granted compensation. Whereas in this case, the accident had occurred on 16.7.2000 and he died on 14.11.2000, immediately within four months. Taking into consideration the nature of injuries the deceased sustained in the brain and within short span of time he died after the accident, the death should have been due to the injuries sustained by the victim in the accident.

13. On the other hand, Mr. S. Vellaichamy, the learned counsel appearing for respondent No. 2, submitted that (i) the Tribunal correctly disbelieved the version of the claimants and rightly found that the death was not due to the injuries caused in the accident; (ii) there was no post-mortem conducted to prove the cause of the death and in the absence of post-mortem report, it cannot be stated that the victim had died because of the injuries sustained by him in the

accident; (iii) the death did not occur immediately after the accident and it had occurred after 4 months, hence, it could not be stated that the death was due to the injuries sustained by him in the accident; and (iv) injured was not properly treated or continued to be treated and because of the negligence only the death occurred.

14. Heard the learned counsel for the appellants and respondent No. 2.

15. Admittedly, accident had occurred on 16.7.2000 and he was hospitalised in Government Hospital, Thirumangalam immediately after the accident. After initial treatment, he was referred to Government Rajaji Hospital, where he took treatment from 16.7.2000 to 5.8.2000. Exhs. P2 and P8, the medical records, would show that X-rays and scan were taken and it was proved that the injuries were inflicted in the brain, which was also confirmed by the categorical deposition of the doctor, PW 3, who treated the victim in the hospital. The portion of the evidence of PW 3 relied upon by the learned counsel for the appellants would detail the injuries caused in the brain. Any injury on the body is a damage to the body. But the injury caused/ inflicted in the brain cannot be equated with the injury caused to the other parts of the body as the brain is the nerve centre of the whole body. Any disturbance or any injury in the brain would affect the very mechanism of the body. A very good example is paralysis. Because of the injury in the brain paralytic stroke occurs. The paralytic patient may lose speech, movement of hands or legs or both. It would make a person abnormal.

16. PW 3 gave details about the blood clots caused in the brain. Any blood clot would affect the function of the brain. It may appear as if there is no injury to the person, who actually sustained injury and the authority, viz., Modi's Textbook of Medical Jurisprudence and Toxicology supports the aforesaid finding,

17. The findings given by the Tribunal are very strange. The Tribunal found fault with the claimants for not marking the X-rays and C.T. scan, which were duly reflected in Exhs. P2 and P8. If respondent No. 2 challenged the veracity of Exhs. P2 and P8, then alone the question of marking X-rays and C.T. scan would arise. As long as Exhs. P2 and P8 are not challenged, marking of X-rays and C.T. scans is not essential. The court is not an expert to go into the details of the medical records. Moreover, the non-marking of X-rays and C.T. scan would not affect the issue involved in the case. What has to be seen by the Tribunal is as to (1) whether the victim sustained injuries? and (2) whether the injuries were due to the accident? When the accident was admitted/proved and the injury was also proved to be due to the accident, then there is no question of going into other aspects of marking of documents as per law of evidence. The proceedings before the Tribunal are summary in nature, where elaborate evidence is not required to be adduced as per the law of evidence strictly. In any event, the claimants proved that the victim sustained injuries in the accident and the injuries were so grave in nature as proved by Exhs. P2 and P8 and by oral testimony of PW 3, the doctor, who treated the victim.

18. In the absence of any rebuttal evidence by a competent neurologist, the evidence of PW 3 has to be believed by the Tribunal. The categorical assertion of PW 3 was that the victim died because of the injuries sustained by him in the accident. However, the Claims Tribunal by irrelevant consideration rejected the plea of the claimant. One peculiar aspect was dealt with by the Tribunal by finding fault with the way in which treatment was given. The duty of the Tribunal is only to see whether there was accident and the victim sustained injury in the accident and whether the death was caused due to the injuries. But, the Tribunal found fault with the way in which there was lapse in continuation of treatment, it cannot be a ground in denying the compensation to the claimant. The Tribunal found fault with the claimant that the victim was taken to Vadipatti Government Hospital from Government Rajaji Hospital Madurai where more sophisticated instruments and machines are available. In this connection it has to be seen that PW I, the father of the victim, was a government servant, working in Vadipatti Government Hospital. So, for the sake of convenience and also for continuation of proper treatment as there are known government doctors there, he shifted his son to Vadipatti Government Hospital. As far as the facilities available in the Government Rajaji Hospital are concerned, those facilities were already made use of by the victim for diagnosis and suitable treatment and only for continuation of treatment, the victim was shifted to the Vadipatti Government Hospital. So, the findings of the Tribunal in this regard are per se and unwarranted.

19. The Tribunal in para 7 referred to PW 3-doctor's evidence. It doubted the fact as to whether there was any blood clot in the brain, because there was no remark by any other duty doctor, who attended the victim, while he was in the Government Rajaji Hospital. PW 3 deposed as follows:

(Omitted as in vernacular)

Based on the aforesaid evidence, the Tribunal doubted the blood clot in the brain. The approach adopted by the Tribunal in appreciating the evidence is unknown to law. It is not the duty of every duty doctor or visiting doctor to make remarks each and every time about the injuries. The doctor who saw the victim first time alone could make the diagnosis and the other doctors will make a remark only on the condition at the time of their respective visits. There is no necessity for the doctors to make a remark about the diagnosis every time again and again. Hence, the finding of the Tribunal doubting the blood clot in the brain has to be rejected as contrary to the evidence available on record.

20. The conjoint reading of evidence of PW 3 and the medical records would undoubtedly reveal that the victim sustained injuries in the accident and the injuries were inflicted/caused in the brain as deposed by PW 3 and proved by Exhs. P2 and P8 and the death was caused due to the injuries caused in the brain. Hence, the death was only due to the accident and the claimants are entitled for compensation and the finding of the Tribunal that the claimants did not prove that the death of the victim was due to the accident is set aside for the

reasons stated above.

21. The learned counsel for respondent No. 2 submitted that in the absence of postmortem certificate it cannot be stated that the death was due to the accident. For that he relied upon the judgment of Patna High Court in *Vijay Laxmi Devi and Others Vs. Ram Naresh and Others*, . In that case, the deceased sustained injury by falling from the bus. In that case neither post-mortem report of the deceased was produced nor certificate from the doctor who examined the deceased and declared him dead was produced to prove that he died due to the injuries he sustained in the accident. Apart from that, the doctor who had treated and examined the victim was not examined. In these circumstances, the learned single Judge of Patna High Court held that the death was not proved by producing postmortem report and examining the doctor. In this case, the doctor, PW 3, who treated the victim was examined and the required documents were marked. Hence, the judgment relied on by the counsel for respondent is not applicable to the facts of the case.

22. The learned counsel for the appellant relied upon the judgment of Andhra Pradesh High Court in *Khairullah and Another Vs. Anita and Others*, , which case also arose under the Motor Vehicles Act. The injured died after 25 days of the accident. The owner and driver contended relying upon the discharge summary that deceased died due to cardio-respiratory failure and not on account of the injury received in the accident. In that case no post-mortem was done. Finding fault with the fact that no post-mortem was done, it was argued that the cause of death was not due to the accident and hence they were not liable. While answering the question as to whether the failure to conduct post-mortem could be taken a circumstance against the claimant, the Hon"ble High Court held that:

It is not a case u/s 302 of the Indian Penal Code, wherein the conducting of post-mortem examination to know the cause of death may be necessary. In this case, the cause of death is known from the documentary evidence, especially Exh. A10, and also from the evidence of PW 2. The evidence of PW 2 is convincing. In the light of both oral and documentary evidence available in this case, the failure to conduct postmortem examination over the dead body of the deceased cannot be taken as a circumstance against the claimants, who are claiming compensation for the death of the deceased.

23. As rightly held by Hon"ble Andhra Pradesh High Court, this is also not a case u/s 302, Indian Penal Code, and here also PW 3, doctor, deposed and Exhs. P2 and P8 were marked to prove the cause of death, viz., the injuries caused in the accident. Hence, the non-doing of postmortem on the body of the deceased would not be a ground to deny the compensation to the claimants. Apart from that there is no contra or rebuttal evidence adduced on the side of the respondent against the evidence already adduced by the claimants. Hence, this court finds that non-doing of post-mortem is not a ground to deny the benefits to the claimants. Hence, this court holds that the death of the deceased occurred only due to the injuries caused to the deceased in the accident.

24. As far as the negligence is concerned, the Tribunal in para 5 of the award rightly concluded that the accident was due to negligence of the respondent No. I's driver. To arrive at the aforesaid conclusion it relied upon PW I's evidence and the evidence of PW 2, who was the eyewitness. There is no appeal by the insurance company challenging the finding in this regard. Even in the absence of appeal, this court opined that only based on the available evidence, the Tribunal rightly concluded that accident occurred due to negligence of respondent No. I's driver.

25. As far as the quantum is concerned, the claimants claimed that the deceased was earning a sum of Rs. 3,000 per month working in a bakery owned by PW 4. PW 1 spoke about the employment of the victim, which was supported by PW 4. In para 12 of the award, the Tribunal rejected PW 4's evidence, relying upon a contradiction in the evidence. Reliance of an isolated piece of evidence cannot be a ground to reject the whole evidence. The evidence of any witness has to be appreciated in toto. PW 4 merely stated that he was the owner of bakery. In Exh. P1, first information report, PW 4 was quoted as saying that his father Marimuthu was running Anandhi Bakery, in which the injured was working. It is usual practice of a person in the family owning the bakery saying that he is running the bakery. Merely because PW 4 deposed in his evidence that his father was the owner of the bakery, it can be a contradiction and the alleged contradiction cannot be a ground for rejecting the whole evidence of PW 4, eyewitness. In the absence of any definite evidence to ascertain the actual income of the deceased, the Hon'ble Apex Court in *The New India Assurance Company Limited Vs. Smt. Kalpana and Others*, , fixed the monthly contribution of the deceased to the family after deducting 73rd income towards personal expenses at Rs. 3,000 per month. Relying upon the said judgment, it can be safely presumed that even in the absence of any material to prove the income of the deceased, this court arrives at the monthly income of the deceased at Rs. 3,000.

26. As far as the multiplier to be adopted in this case is concerned, the victim was aged about 22 years at the time of accident and the mother was aged about 46 years, when they made the claim petition. As per the Second Schedule appended to the Motor Vehicles Act, the proper multiplier to be adopted is 13. If multiplier 13 is adopted the loss of income comes to Rs. $3,000 \times 12 \times 13 =$ Rs. 4,68,000 (rupees four lakh and sixty-eight thousand). As far as the transportation expenses and the funeral expenses are concerned, awarding a sum of Rs. 2,500 (rupees two thousand and five hundred) each is reasonable and the same is accordingly confirmed. For loss of love and affection, the claimants are entitled to a sum of Rs. 20,000 (rupees twenty thousand), For treatment, there is no necessity to award any amount as the victim took treatment only in government hospitals. Accordingly, the compensation awarded by the Tribunal is enhanced as follows:

(i)

Loss of income

Rs.4,68,000

(ii)

Loss of love and affection

Rs. 20,000

(iii)

Funeral expenses

Rs. 2,500

(iv)

Transport expenses

Rs. 2,500

Total

Rs.4,93,000

The accident occurred on 16.7.2000. The rate of interest prevailing on the date of accident was 9 per cent per annum. Accordingly, the claimants are entitled to 9 per cent per annum interest from the date of petition.

27. Though the claimants prayed for Rs. 1,50,000 in the claim petition, this court is inclined to grant a sum of Rs. 4,93,000 on appreciation of evidence available on record. This court has got jurisdiction and power under Order 41, rule 33 read with section 151, Civil Procedure Code, section 173 of the Motor Vehicles Act and under Article 227 of the Constitution of India to ward more compensation, if the facts of the case warrant. A three-Judge Bench of Hon'ble Apex Court in Nagappa Vs. Gurudayal Singh and Others, , held that the court can award more compensation than the amount claimed. The same view is reiterated in National Insurance Company Ltd. Vs. Smt. Saroj and Others, and Clara Mathew and Elizabeth Mathew Vs. T. Harendranath and The Original Insurance Company Limited, ,

28. The appeal u/s 173 of the Motor Vehicles Act is a statutory appeal and the contention raised by the appellant should be considered and findings should be arrived at by this court based on the evidence. This view is supported by the judgment of the Apex Court in Jai Singh Vs. Salinder and Another, and in Eastern Coalfields Ltd. v. Maya Devi, 2001 ACJ 1064 (SC). When the facts and evidence satisfy this court to award more amount than prayed for, this court is not powerless to award higher compensation. The proceedings before the special Tribunal constituted u/s 165 of the Motor Vehicles Act are summary in nature governed by section 169 of the Motor Vehicles Act and the same has been held in Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, . It has been held by the Supreme Court in Ningamma and Another Vs. United India Insurance Co.

Ltd., , as follows:

(25) Undoubtedly, section 166 of the Motor Vehicles Act deals with "just compensation" and even if in the pleadings no specific claim was made u/s 166 of the Motor Vehicles Act, in our considered opinion a party should not be deprived from getting "just compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the Motor Vehicles Act is beneficial and welfare legislation. In fact, the court is duty-bound and entitled to award "just compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of section 147 of the Motor Vehicles Act would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

(Emphasis added)

In another judgment in *Raj Rani and Others Vs. Oriental Insurance Co. Ltd. and Others*, , the Supreme Court held that it is not necessary in proceedings under the Motor Vehicles Act to go by any rules of pleadings or evidence and that section 166 of the Motor Vehicles Act speaks about grant of "just compensation" and that court's duty is to award just compensation and that it would try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.

(Emphasis added).

Therefore, strict rule of pleadings and evidence is not mandatory before the Tribunal as spelt out in *Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others*, It has been held in *Union of India (UOI) and Another Vs. Mrs. Saraswati Debnath and Others*, , that the claim petition has to be decided on the basis of preponderance of probability and evidence should not be scrutinised as is done in civil and criminal cases; it is also settled principle of law that it is not necessary to appreciate the finer details of evidence to arrive at a conclusion in the claim cases before the Tribunal. Hence this court is justified in granting more compensation, even if lesser amount is sought for.

29. Apart from that, this court has to consider the beneficial nature of the legislation. Chapters X to XII of the Motor Vehicles Act, 1988 were incorporated by Parliament for the benefit of innocent motor accidents victims. The beneficial nature of the Act has been declared by the Hon'ble Apex Court in a number of cases including in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, (3-Judge bench); in *Ningamma and Another Vs. United India Insurance Co. Ltd.*, ; and in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, . This court is duty-bound to keep in mind the social welfare and beneficial legislation while dealing with claims under the Act. Technicalities should be divorced when deciding the matter arising out of Motor Vehicles Act claims and justice should be rendered

completely. The compensation awarded should be fair and reasonable and should not be arbitrary or very low. In an endeavour to render justice only, this court awards compensation more than claimed by the claimants in the petition.

30. This court u/s 173 of the Motor Vehicles Act can re-appreciate the whole evidence to decide the matter. This court draws support for the aforesaid proposition from the Apex Court judgment in Smt. Thokchom Ongbi Sangeeta @ Sangi Devi and Another Vs. Oriental Insurance Co. Ltd. and Others, . It is settled law that the appeal is the continuation of original proceedings and this court can decide the matter independently and award "just compensation".

31. Under Order 41, rule 33 read with section 151 of Civil Procedure Code, in order to render justice this court can award more compensation based on the evidence. The power and the discretion are vested with this court to enhance the amount according to the facts of the case, if the compensation awarded by the Tribunal is not "just". Even in the absence of any appeal/cross-appeal by the claimants, this court can enhance the compensation in this appeal preferred by the insurer. The aforesaid proposition has been settled by the Hon"ble Supreme Court in

(1) Nagappa Vs. Gurudayal Singh and Others, .

(2) Mahant Dhangir v. Madan Mohan, AIR 1938 SC 54.

(3) The State of Punjab and Others Vs. Bakshish Singh, ,

(4) Andhra Pradesh State Road Trans. Corpn. v. M. Ramadevi, 2008 ACJ 930 (SC).

(5) Managing Director (Metro), Pallavan Transport Corporation Ltd. Vs. Kalavathy and Others, .

(6) Managing Director, Thanthai Periyar Transport Corp., Villupuram Vs. Sundari Ammal and four Others, ,

(7) The Managing Director, Annai Sathya Transport Corporation Ltd., Dharmapuri Vs. Janardhanam and 7 others, ,

32. Even otherwise, under Article 227 of the Constitution, this court has power and jurisdiction to pass such a decision or direction as the inferior court/Tribunal should have made. The above ratio was laid by Apex Court in Smt. Shail Vs. Shri Manoj Kumar and Others, . In Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, , it has been held that where the order passed by the Tribunal results in manifest injustice, this court can justifiably intervene under Article 227 of the Constitution of India. Moreover, this court can invoke Article 227 sua motu and decide the matter, if the court/Tribunal below has not passed order correctly. This court draws support for the above said view from the judgment of the Supreme Court in Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, .

33. For the reasons stated above and the various provisions of the above-

mentioned laws, this court awards Rs. 4,93,000 even though the claimant claimed Rs. 1,50,000 only in the claim petition. In the result, the civil miscellaneous appeal is allowed by enhancing the total compensation awarded by the Claims Tribunal from Rs. 20,000 (rupees twenty thousand) to Rs. 4,93,000 (rupees four lakh and ninety-three thousand) which amount shall carry interest at the rate of 9 per cent per annum from the date of petition till the date of realization. The claimants are entitled to equal shares in the award. The insurance company is directed to deposit the said amount within 6 weeks from the date of receipt of a copy of this order. The Tribunal is directed to pay the amount to the claimants within one week from the date of deposit. The claimants have to pay the required additional court-fee before the Tribunal to get the enhanced compensation. The appeal is allowed and there will be no order as to costs.