
(2009) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 1154 and 1487 of 2004

B. Ramulamma and Others

APPELLANT

Vs

Venkatesh, Bus Union and Another

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 166, 168

Citation : (2011) ACJ 1702 : (2009) 6 ALD 684 : (2009) 6 ALT 784 : (2011) 7 RCR(Civil) 1672

Hon'ble Judges : B. Chandra Kumar, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : A. Vishnuvardhan Reddy, for the Appellant; None Appeared for Respondent No. 1 and Kota Subba Rao, for the Respondent

Judgement

B. Chandra Kumar, J.—Since both the Appeals arise out of the same accident and common order, dated 05-01-2004 in O.P. Nos. 595 and 300 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Mahabubnagar, respectively, they are being disposed of by this common Judgment.

2. For the sake of convenience, the parties will be referred to as they are arrayed in the Tribunal.

Sixteen students including both the deceased were proceeding on eight motor cycles on a holiday trip. The deceased G. Prashanth Reddy and B. Ravi Kumar, both aged about 21 years, were proceeding on a motor cycle bearing No. AP 04/6504 on 01-05-1995 from Tumkur, Karnataka State, to Kemmanannagundi. The deceased Prashanth Reddy was driving the said motor cycle and the deceased Ravi Kumar was the pillion rider. When they reached Guddadapalayam gate and proceeding along with the left side of the national highway at about 3-15 p.m., the tourist bus bearing No. KA 03/5252, owned by the first respondent and insured with the second respondent, being driven by its driver, came in a rash and negligent manner at high speed from opposite direction and

dashed against the motor cycle of the deceased. As a result of which the motor cycle of the deceased was dragged to a distance of 75 feet on the road and both the deceased sustained serious injuries and the deceased Ravi Kumar died on the spot and the deceased Prashanth Reddy died on the way to the hospital at Gubbi. The bus driver did not stop the bus at the place of accident. PW-4, G. Vijayabhaskar Reddy, who was following the deceased on another motor cycle, lodged a report to the police at Tiptur. The Police, after completing the investigation, laid the charge sheet against the driver of the bus.

3. The parents of the deceased Prashanth Reddy filed O.P. No. 300 of 1996 and the mother of the deceased Ravi Kumar filed O.P. No. 595 of 1996. The Tribunal clubbed both the O.Ps and disposed of the same through the common order.

4. The specific case of the claimants in O.P. No. 300 of 1996 is as follows:

The deceased Prashanth Reddy was studying B.E. computers final year in Sidha Ganga Institute of Technology and he was hale and healthy at the time of accident. The claimants had high hopes about the future of the deceased. The deceased was a brilliant student. He would have become Engineer and would have earned Rs. 15 lakhs as an Engineer in any government or private institution. He had bright prospects of securing handsome job in abroad. He would have contributed his earnings to the claimants. The claimants claimed a total compensation of Rs. 15 lakhs.

5. The mother of the deceased Ravi Kumar, who is the claimant in O.P. No. 595 of 1996, made the following averments:

The deceased Ravi Kumar was studying B.E Computers final year and he was aged about 21 years and hale and healthy. He was the only son of the claimant. The deceased would have become Engineer and earned a salary of Rs. 7,500/- per month. He would have looked after the claimant throughout her life. The claimant borrowed huge funds for educating the deceased. The deceased would have earned more than Rs. 10 lakhs. The claimant claimed a total compensation of Rs. 15 lakhs.

6. The first respondent remained ex parte. The second respondent filed separate counters in both the O.Ps. and denied the averments of the claimants that the accident occurred due to the rash and negligent driving of the bus driver. It is further averred that the deceased Prashanth Reddy himself had driven the motor cycle in a rash and negligent manner and he was responsible for the accident. The other averments of the claimants with regard to the age, health condition, education and future prospects of the deceased have been denied. It is not admitted that the vehicle was insured with the second respondent-insurance company and that the driver of the bus was having valid driving licence as on the date of accident. It is further averred that the claim of the claimants is excessive and exorbitant.

7. The Tribunal framed the following issues for trial:

1. Whether the accident occurred due to rash and negligent driving of the driver of Tourist bus No. KA-03/5252?
2. Whether the petitioners are entitled to claim compensation from the respondents and if so, to what amount and against whom?
3. Whether the respondents are liable to pay the compensation?
4. To what relief?

8. On behalf of the claimants, the first claimant in O.P. No. 300 of 1996, the claimant in O.P. No. 595 of 1996 and the two classmates of the deceased were examined as PWs.1 to 4 respectively and Exs.A-1 to A-17 were marked. On behalf of the Insurance Company, no witnesses were examined. But Ex.B-1 copy of the Insurance Policy was marked.

9. The Tribunal, on appreciation of oral and documentary evidence, came to the conclusion that the accident occurred due to rash and negligent driving of the bus driver. The Tribunal, considering that both the deceased were only students, fixed the notional income of each deceased @ Rs. 5,000/- per month and after deducting half of the income towards personal expenses and after applying the multiplier "13", awarded the compensation at Rs. 3,90,000/- to the claimants in each O.P. The tribunal also awarded Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss of estate. Being aggrieved by the same, the claimants preferred the present Appeals.

10. The main contention of the learned Counsel for the claimants, Sri A. Vishnuvardhan Reddy, is that both the deceased were final year students of B.E. Computers course and that the Tribunal failed to appreciate the evidence of PW-3, who is a classmate of both the deceased, and failed to consider his income as shown in Exs.A-8 to A-10. Ex.A-8 shows the gross pay of PW-3 at Rs. 80,232.33 per month and net pay at Rs. 54,633.53 per month. It is his further submission that the minimum income of the Computer Engineers ought to have been taken as basis for determining the income of both the deceased. It is further argued that Ex.A-7, the earnings statement of the another classmate of the deceased, shows that his gross pay is \$ 2220.96 and net pay at \$ 1855.83 per month. It is also submitted that the Tribunal ought to have taken multiplier "15" as per the Judgment of the Hon'ble Supreme Court in Smt. Sarala Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 (3) Supreme 487 : 2009 (4) SCJ 91 and ought to have taken the minimum income of the both the deceased at Rs. 15,000/- per month. Therefore, the order of the Tribunal cannot sustain and the same is liable to be modified by awarding Rs. 15 lakhs compensation to the claimants in each O.P.

11. Sri K. Subba Rao, the learned Standing Council for the Insurance Company, submitted that the Tribunal had awarded a reasonable compensation and there is no need to enhance the compensation in these Appeals. It is also his submission that in view of the future uncertainties, the income of the Software Engineers

cannot be taken as basis for determining the compensation.

12. In support of his contentions, the learned Counsel for the claimants relied on the following decisions:

Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, , Balakrishna N. Shetty v. B.K. Ibrahim 2005 ACJ 2100 and New India Assurance Co. Ltd. v. Satender and Ors. 2007 (1) ALD (SC) : 2007 (1) ALT 26 (SC) : 2007 (1) SCJ 152 : 2007 (1) An.W.R. 25 (SC).

13. The points that arise for consideration are:

1. Whether the accident occurred due to the negligence of the driver of the bus or not?
2. How to determine the income of a student, who is about to complete his course?
3. Whether the income of the classmate of the deceased can be taken as basis for determining the income of a student, who died in a motor accident?
4. Whether minimum wage or entry level salary prescribed to a job, which the deceased would have secured after completion of his education, could be taken as basis?

POINT No. 1:

14. As seen from the evidence on record, on 01-05-1995, 16 students were proceeding on 8 motor cycles from Tumkur to Kemmanannagundi. P.W.4, G. Vijayabhaskar Reddy is one of them. According to P.W.4, they were all proceeding in a line one after another. The road at the place of accident is a straight road. According to P.W.4, the offending bus came from the opposite direction, suddenly turned towards right and hit the motor cycle of the deceased and dragged the motor cycle for some distance. P.W.4 specifically deposed that the accident occurred due to rash and negligent driving of the bus driver. According to him, the deceased Ravi Kumar died on the spot and the deceased Prashanth Reddy died in the hospital at Gubbi. He further deposed that he went to police station at Tiptur and lodged a report under Ex.A-1. He denied a suggestion that they are driving the motor cycles negligently and that the driver of the bus was not negligent in driving the bus.

15. Ex.A-1 is the C.C. of the FIR with true translation, which shows that PW-4 lodged the report to the police. Ex.A-2 is the copy of the charge sheet with true translation. Ex.A-3 is the copy of the postmortem examination report of the deceased Prashanth Reddy. Ex.A-4 is the MVI report, which shows that the accident had not occurred due to any mechanical defects of the vehicle. Ex.A-14 is the copy of postmortem examination report of the deceased Ravi Kumar. Except the evidence of P.W.4, there is no other oral evidence in this case. The evidence of P.W.4, which is corroborated with the contents of the above referred documents, clinchingly establishes that the bus came to wrong side and dashed

against the motor cycle of the deceased. The very fact that the motor cycle was dragged to some distance itself proves that the bus driver was negligent while driving the bus.

16. In view of the above discussion, it is clear that the finding of the Tribunal on this issue is based on record.

POINT Nos. 2 to 4:

17. It is most unfortunate that both the claimants have lost their only sons shattering all their future hopes. The most lovable persons are their children to any parents. The parents work hard, save money, sometimes do overtime work just for the sake of their children to give good education to them. Most of the parents want to give the best possible they can give to their children. Their only hope would be that when they become old, weak and sick, the children would look after them and provide basic needs. Therefore, where the parents have the only child, the loss of such child would cause great mental agony to the parents. The object of the relevant provisions of the Motor Vehicles Act is to provide just and reasonable compensation to the victims of the motor accidents, may be injured or the dependants of the deceased. What is just and reasonable compensation is a question that arises very often. The object of the relevant provisions of the Act appears to be to give a sort of social security to the bereaved family. The life is precious and no amount of money can compensate the loss of life. Perhaps the only thing so far no Scientist could do is reviving of a lost life. It is impossible to bring back the life. Therefore, it has to be seen whether the Tribunal or the Court would keep the parents, wife or children of the deceased in the same position in which they would have lived had the deceased not died in the accident and that should be their object. Therefore, the Tribunals or Courts should award just and reasonable compensation and to give quick redressal to the victims of the accidents. The object should be to alleviate the victims from the tragedy in which the victims are placed keeping in view the object of the beneficial legislation.

18. The Hon'ble Supreme Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC), observed as follows;

When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by it, by way of business activity, there is hardly any choice. The court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, very same conclusion would emerge in obeisance to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.

19. In *United India Insurance Co. Ltd. Vs. Reeta Devi and Others*, , the Delhi High Court observed as follows:

FURTHER, the Claims Tribunal is expected to fix such compensation which may appear to it to be just. Just compensation would mean "reasonable" compensation for the injury caused in an accident resulted due to negligence of a motorist, including the driver of the bus. So, "just" would mean appropriate, equitable, or proper. It signifies that the compensation amount should be so assessed as to make provision for the legal representatives of the deceased to receive or earn such pecuniary benefits as they could have obtained from the deceased if he had lived his normal life. The grant of compensation amount, which would enable the legal representatives of the deceased to earn more pecuniary benefit than one that had been available to them from the deceased during his lifetime, would not be proper and grant of compensation amount which would not enable such legal representatives to earn as much pecuniary benefit as was available to them from the deceased during his lifetime, would not be equitable.

20. The very use of the words "just compensation" u/s 168 of the Motor Vehicles Act, 1988 makes it clear that the Tribunal is duty bound to act in a realistic manner sitting in arms chair. Therefore, awarding just and reasonable compensation is neither charity nor out of sympathy. The claimants, as a matter of right, are entitled for just and reasonable compensation. It is their right which is being protected and assured to them while awarding just and reasonable compensation to them. The Courts have to do substantial justice and the technicalities and procedural law should not defeat the main object of rendering justice.

21. In *State of Haryana and Another Vs. Jasbir Kaur and Others*, , the Hon"ble Supreme Court observed as under:

(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.

22. In Maharashtra State Road Transport Corporation v. Prasad Vasant Rao Deshpande 2005 MhLr (1) 762, the Bombay High Court observed as follows:

The word "just" as its nomenclature denotes equally fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary, it is restricted by the conscientious which is fair, reasonable and equitable if it exists its term as unfair, unreasonable equitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provisions of the Act or any other provisions having the force of law.

23. In this case, admittedly both the deceased were studying final year B.E. computers course. PW-3, G. Vijaya Krishna, the classmate of the deceased, was also studying in the same engineering college in which both the deceased were studying, and according to PW-3, he has been working as a Senior Consultant in Oracle, Bangalore since September, 2003. Earlier he worked in HCL Perot Systems, Bangalore from January, 1996 to August, 2001. It is the case of PW-1 that his son, who was a student of B.E. Computers final year, would have become a Software Engineer and would have earned about Rs. 25,000/- to Rs. 30,000/- per month. Ex.A-7 is the earning statement of the classmate of the deceased showing gross pay at \$2220.96 and net pay at \$ 1855.83 per month. Ex.A-8 is the pay slip of PW-3 for the month of June, 2003, showing the income at Rs. 40,000/- per month and Ex.A-9 is the revised salary certificate which shows that PW-3 was getting Rs. 6,60,000/- per annum. Ex.A-10 is Form-16 of the income tax return, which also shows that the income of PW-3 is Rs. 6,22,370/- per annum. PW-3 was getting a gross income of Rs. 80,232.33 ps in June, 2003 and Rs. 53,844.83 ps in July, 2003. There cannot be any doubt to say that PW-3 is getting handsome income and he is well placed in the society. The prospects of the deceased also getting job cannot be doubted. Of course uncertainties will be always there.

24. PW-2, the mother of the deceased Ravi Kumar, deposed that her son wanted to go to USA and would have earned Rs. 2 lakhs per month and that he had very good prospects in his future career.

25. PW-4, another classmate of both the deceased, deposed that he is earning Rs. 20,000/- per month on his business. Ex.A-16 is his course completion certificate and Ex.A-17 is the copy of pan card.

26. So the evidence of PWs.3 and 4 shows that they are in a very good position. PW-4 is of course doing business, but PW-3 is an employee earning handsome income. PWs.2 and 3 (sic. 3 and 4) have categorically denied a suggestion that

the deceased would have earned only Rs. 3,000/- to Rs. 5,000/- per month. Of course PW-1 stated that may be an engineering student with similar degrees are earning nowadays Rs. 3,000/- or Rs. 5,000/- in our country. But that does not mean that PW-1 has admitted that the engineering students with similar degrees are earning Rs. 3,000/- to Rs. 5,000/- per month. It is common knowledge that for denying a suggestion some people sarcastically may say as "may be". It has to be seen that PW-1 has referred to the students and not to the employees who after completing B.E. course would have earned. PW-1 categorically deposed that his son would have earned Rs. 25,000/- to Rs. 30,000/- per month. Before treating a sentence as admission entire evidence must be considered to understand what the witness really wants to convey. Therefore, the Tribunal seems to have committed an error in holding that PW-1 admitted that after completing B.E. course, the deceased would have earned only Rs. Rs. 3,000/- to Rs. 5,000/-per month. Since it cannot be said that the deceased would have secured same job in the same company with same salary as earned by PW-3, the salary of PW-3 cannot be taken as basis for determining the salary of the deceased. However, a rationale method has to be adopted.

27. In Bijoy Kumar Dugar's case (supra), the accident took place on 15-04-1988 (21 years ago). The deceased was a science graduate and pursuing law study and was earning Rs. 4,000/- as an attorney holder of a petrol pump. The Tribunal had accepted the income of the deceased at Rs. 4,000/-per month and after deducting Rs. 400A towards his personal expenses, estimated the loss of earnings at Rs. 3,600/- and calculated a total compensation of Rs. 3,53,600/-, but awarded Rs. 1,76,800/- due to contributory negligence of the deceased and the same was upheld by the Supreme Court.

28. In Balakrishna N. Shetty's case (supra), the accident took place on 08-02-1989 (20 years ago) and the deceased was the third year BDS student in medical college. The loss of earnings were taken at Rs. 4,000/- per month.

29. In Satender and Ors.'s case (supra), the Hon'ble Supreme Court held that:

There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

30. In Delhi Transport Corporation v. Sudershan Yadav 1995 AD (Del) (1) 877, the accident occurred on 10-05-1980 (28 years ago). The deceased had completed B.E. Mechanical Engineering and was studying MBA second year. The

Tribunal assessed the earning capacity of the deceased at Rs. 2,000/- per month. The Delhi High Court, holding that the Tribunal has not taken into account the future prospects of the deceased and that he was a bright student, has taken the income of the deceased at Rs. 3,000/- per month and the loss of contribution at Rs. 2,000/- per month.

31. In *Hukmabati and Others Vs. Punjab Roadways and Others*, , the Himachal Pradesh High Court while considering the case of the deceased, who was aged about 15 years and studying 10th class, estimated the future earnings of the deceased at Rs. 5,000/- per month. The monetary loss to the mother was taken at Rs. 1,500/- per month and total compensation was awarded at Rs. 2,70,000/-.

32. In *National Insurance Co. Ltd. Vs. Ujjwala and Others*, , the High Court of Madhya Pradesh confirmed the compensation of Rs. 5,00,000/-, in a case where a boy of 18 years, who had completed XII class examination, and was desirous of seeking admission in Symbiosis College, Pune, so as to pursue BBA and MBA courses, died in the accident.

33. In *Delhi Transport Corporation's* case (supra) the accident occurred about 29 years ago and in *Hukmabati's* case (supra), the accident occurred about 13 years ago and in *Ujjwala's* case (supra), the accident occurred about 8 years ago. Therefore, the inflation, decrease in money value, the raising prices etc. have to be taken into consideration.

34. In *Ramehar v. Vinod Kumar* 2009 ACJ 452, the Delhi High Court, while dealing with the case of a boy possessed matriculate qualification, aged about 18 years, who died in an accident, and for determining his income, has taken into consideration the minimum wages as on the relevant date of accident of matriculate person.

35. As far as the students, who are about to complete their course, are concerned, it is very difficult to determine their income. Guess work becomes inevitable. But even for guess work some rationale has to be followed. Every conclusion must be based on sound reasoning and established legal principles. The parents of the deceased with fond hope impart education to their children. Nowadays the educational expenses have been increased. Even if a student secures a seat in EAMCET under Convener quota, the parents have to bear other expenses, such as hostel fees, books, traveling charges etc. Normally, the parents have to spend at least Rs. 70,000/- to Rs. 1,00,000/- per annum to meet the expenses of their children, who are studying B.Tech or M.Tech or similar courses. Of course expenditure incurred for education cannot be taken as basis for determining the income of the deceased students. After completing their education, when they may secure a job, what would be their salary and how long they would have continued in their job and how much they would have contributed to their parents are the questions which necessarily depend upon some guess work. In such circumstances, the evidence of contemporaries or the classmates of those students who have secured job and who are getting regular

income can be taken as basis.

36. The Hon^{ble} Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , observed as follows:

The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be niggardly since the "law values life and limb in a free society in generous scales". At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant (s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.

37. The Hon^{ble} Supreme Court in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, , observed as follows:

(11) AS noted earlier, in the matter of computation of compensation, there is no uniform rule or formula for measuring the value of a human life. Though a special provision for assessment of compensation on structured formula basis for the purpose of a claim petition u/s 163 a of the Act has been inserted in the Act with effect from 14th November, 1994, but no such formula has been laid down for determination of compensation in a claim petition u/s 166 of the Act, though there is no bar in taking the said schedule as a guiding factor while determining the just compensation by applying multiplier method. In fact, in The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , it has been observed that the second schedule to the Act may serve as a guide but cannot be used as an invariable ready reckoner. In a catena of decisions of this Court, certain broad principles which could be applied for assessing just compensation have been highlighted. It has been observed that in a fatal accident action, the accepted measure of damages awarded to the dependents is the pecuniary loss suffered and likely to be suffered by them as a result of abrupt termination of life. The question as to what factors should be kept in view for calculating pecuniary loss to a dependent came up for consideration before a three-Judge bench of this Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , with reference to a case under the Fatal Accidents Act, 1855, wherein, K. Subba Rao, J. (as His Lordship then was) speaking for the Bench observed thus: "in calculating the pecuniary loss to the dependants many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly, stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source

comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

(12) TAKING note of the afore-extracted observations in Gobald Motor Service Ltd. (supra) in Susamma Thomas (supra), it was observed that the assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live upto the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or may have lost his employment or income altogether.

(13) THUS, for arriving at just compensation, it is necessary to ascertain the net income of the deceased available for the support of himself and his dependents at the time of his death and the amount, which he was accustomed to spend upon himself. This exercise has to be on the basis of the data, brought on record by the claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture. The figure arrived at by deducting from the net income of the deceased such part of income as he was spending upon himself, provides a datum, to convert it into a lump sum, by capitalising it by an appropriate multiplier (when multiplier method is adopted). An appropriate multiplier is again determined by taking into consideration several imponderable factors. Since in the present case there is no dispute in regard to the multiplier, we deem it unnecessary to dilate on the issue.

38. In case where the deceased was a Central or State Government employee, there may not be any problem to determine the compensation since basing on the last drawn salary of such employee and income tax deductions, if any, the just compensation can be determined. Similarly in case of employees or workers of public sector undertakings or private firms and other corporations, there may not be any difficulty to ascertain the salary of the deceased. As far as the businessmen are concerned, the income tax returns filed by the deceased before his death can be taken into consideration. The difficulty arises where there is no proof of income. In a case where the deceased was getting income from the capital assets such as rents, agricultural income etc., there may not be any loss to the legal heirs of the deceased since the asset so also the income from the asset remains with them. In this regard, it is pertinent to refer to the decisions of the Hon"ble Supreme Court in New India Assurance Co. Ltd. Vs. Charlie and Another, , wherein it was observed as follows:

It is settled law that normal rule of determination of loss of dependency is not strictly applicable to cases where capital asset is the income of the deceased.

39. In a case where the deceased was working as a managing partner or

managing the affairs of the business and also in the case of agriculturists, the services rendered by the deceased as manager or the supervisor have to be estimated in terms of money and the compensation can be determined on the basis of the value of such services. However, the total income from the agricultural land or business firm or the industry cannot be taken as basis to calculate the income of the deceased since the agricultural lands or the business would continue to be with his legal heirs. The main problem arises in a case where there is no definite income and where the deceased have completed or about to complete their education and enter into the profession.

40. In this case both the deceased were studying B.E. Computers course final year. How much the deceased would have earned during the reminder of their life, how much amount he would have contributed to their dependants in future and the chances of his getting employment or loosing employment cannot be definitely ascertained. But nobody can definitely say that the deceased would have remained as unemployed and would not have earned anything in their future life. It may be more rationale and reasonable to say that the deceased would have got employment and earned basing upon the qualifications, technical qualification and skills acquired by him. When his classmates and contemporaries have secured job and earning huge salary, it may be reasonable to take a view that the deceased would have also earned at least entry level salary prescribed for the said job. Again the problem arises when the classmates of the deceased are employed in private sector such as IT. field, where there is no guarantee of employment, the fluctuations in the market have to be taken into consideration. Therefore, even if the classmates of the deceased are earning huge salary, the same cannot be taken as basis since there is no guarantee that the deceased would have secured some job with similar emoluments or that his classmates would have been continued to earn the same salary in their remaining career. Without wholly depending upon the guess work, the rationale and practicable method may help us. Just compensation means it should be neither excessive nor on the lower side. How much the deceased would have earned or what is the basis to determine the income of a person, who is not employed, are the questions that have to be addressed. It appears that what job in ordinary course, the deceased with his qualifications would have secured is of course a guess work. But the income earned by his classmate with similar educational and technical qualifications would be certainly relevant and it appears to be rationale, just and reasonable to take the income of the classmate of the deceased as guiding factor to determine the income of the deceased in a motor accident case, since in all probabilities the deceased would have got similar job. It appears to us that the wages fixed under the Minimum Wages Act, 1948 for various categories of employment can be taken as guidance because the just compensation should be neither excessive nor on the lower side. In this regard it is pertinent to refer the following Judgments:

41. In Oriental Insurance Company Limited Hyd. Vs. Koti Koti Reddy and another, , this Court held that:

Award of compensation by the Commissioner computing the wages of the workman based on minimum wages payable to him, notwithstanding drawal of less than such wages by him, can be sustained.

42. The Delhi High Court, While making addition to the income considering the inflation, in Delhi Development Authority Vs. Smt. Rukmani Bansal and Others, , observed as follows:

Taking into consideration the fact that minimum wages as notified under the Minimum Wages Act increase by nearly 250 per cent to 300 per cent every 10 years to neutralize rise in inflation and cost of living, it could reasonably be expected that the earnings of the deceased would have doubled by the time he would have stopped earning. Thus, mean average annual income of the deceased comes to Rs. 16,998/-.

43. The Delhi High Court in Ramehar v. Vinod Kumar (supra), while dealing with the case of a boy aged about 18 years, who had completed matriculation, observed that the minimum wages as applicable for matriculate person can be taken as basis for determining the income of the deceased. Considering the revision in minimum wages after every 10 years took the average of the minimum wage and determined the compensation.

44. While considering the question whether the daily allowance (Bhatta) could be considered as wage, the Madhya Pradesh High Court in Smt. Shakuntala and Others Vs. Kanna Dangi and Others, , after extracting the definition of "wages" under Payment of Wages Act, 1936, Minimum Wages Act, 1948, Industrial Disputes Act, 1947 and Workmen's Compensation Act, 1923, observed that:

It is amply clear that the "wages" means all remunerations whether by way of salary, allowance or otherwise expressed in terms of money or capable of being so expressed, payable to a person employed in respect of his employment or of work done in such employment and includes any additional remuneration, any travelling allowance or the value of any travelling concession or any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, shall form part of the Wages.

45. In Saundatti S.B. Vs. Biyamma, , it was held that the Bhatta paid to a cleaner was a benefit received by him forming part of wages.

46. Suffice to say that even while considering the claims under Motor Vehicles Act in some of the decisions referred above, the minimum wage was taken as basis for determining the income of the deceased. It is not in dispute that the minimum wages have been fixed on rational basis taking into consideration that it is for the subsistence of the life of the employee and for the preservation of the worker.

47. During famine relief work, a provision was inserted for payment of less than minimum wage fixed under Minimum Wages Act. The Hon"ble Supreme Court in Sanjit Roy v. State of Rajasthan 1983 LIC 312, observed that the provision

inserted for payment of less than minimum wage is violative of Article 14 of the Constitution of India.

48. Taking the gross salary of the Computer Engineers working in I.T. field or holding that the deceased would not have earned anything or taking meagre income of the deceased, appears to be unreasonable and illogical. In view of the same, we are of the view that the salary of an employee, who is the classmate of the deceased, when he entered into service in any government or private sector, after completing any course of B.Tech or M.Tech course, can be taken as basis for determining the income of the deceased. It is common knowledge and not disputed across the bar that the basic pay of a new entrant into the Government or private sector, who possesses B.E. or B.Tech qualification, is Rs. 8,000/- and his total emoluments are not less than Rs. 20,000/- per month. In Central Government, the basic salary of an engineering graduate as per revised scales is Rs. 15,600/- per month and plus grade pay is in between Rs. 5,000/- to 6,000/- per month. Even research scholars are getting more than Rs. 10,000/- per month. In the notification No. 36/2008, dated 30-12-2008, issued by the Andhra Pradesh Public Service Commission, Hyderabad, for the post of Assistant Executive Engineer in various departments, the prescribed qualification is shown as B.E./B.Tech in Civil/Mechanical/Electrical Engineering and the scale of pay is shown as Rs. 9285-21550/-.

49. As discussed above, since there is no guarantee of employment in IT. sector and there may be uncertainties in case of private companies, it may be more appropriate, reasonable and rationale to take the minimum wage or salary at entry level fixed by the government to such jobs, which the deceased after completing their course, would have got. Therefore, the basic salary of the new entrant into the profession, who is the classmate of the deceased, should be taken as basis for determining the income of a deceased, who died in a motor accident while studying.

50. There cannot be any controversy to say that the payment of wages less than the minimum wage is an offence. Nobody can deny the fact that the minimum wages have been fixed taking into consideration several factors to fulfill the basic needs of a worker and therefore, the same can be taken as basis for determining the income of a workman. It is common knowledge that the workers are being paid much more than the prescribed minimum wages in many scheduled employments. Therefore, where in a case it is proved that the deceased was earning more than the prescribed minimum wage, the same should be taken as criteria for fixing his income ignoring the minimum wages prescribed. Therefore, for all the scheduled employment, for which minimum wages have been fixed, the same can be taken as basis for determining the income of a workman or employee, who died in a motor accident. The agricultural workers, Technicians, Drivers, Electricians, shop employees, all most all categories of workers and employees have been covered under the schedules of Minimum Wages Act. Where there is no scheduled employment prescribed under the Minimum Wages

Act, the wage can be fixed basing on the wages fixed to the worker or employee who does similar nature of work. That means the income of a worker can be determined basing on the income earned by a worker doing the similar work. For non-scheduled jobs the salary fixed by the government at entry level can be taken as guidance. The job, which the deceased would have secured had he not died in the motor accident, and the salary of his classmates should be the basis. Similarly where the students have acquired basic qualifications such as Electrician, Fitter, Technician, Driver etc., and who died or sustained permanent disability, their income may be fixed on the basis of the income prescribed under the Minimum Wages Act or on the basis of the income earned by the newly appointed persons to such jobs whichever is on higher side. As far as the students, who completed or in final year or last semester of B.Tech., B.E., B.C.A., M.Tech., M.E., or M.B.A., M.C.A., etc. courses and who died in motor accidents or sustained permanent disability, their salaries also can be fixed on the basis of the salary of their classmates when they entered into jobs. Some percentage say e.g. 10% per year can be deducted in respect of the students studying III year or II year as the case may be.

51. In view of the present salaries, being earned by the Computer Engineers, there cannot be any doubt to say that the deceased would have earned minimum Rs. 12,000/- to Rs. 15,000/- per month. It has to be seen that nowadays IVth class employees are also getting minimum Rs. 7,000/- to Rs. 10,000/- per month depending upon their service. The Junior Assistants are also getting Rs. 12,000/- to Rs. 15,000/- per month. Therefore, considering the normal scales being earned by the Government employees and also the minimum wage scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, who is holding a bachelor degree in computers or electronics or mechanical, can be taken as Rs. 12,000/- per month. Therefore, the income of the graduates in engineering i.e., B.Tech., cannot be fixed less than Rs. 12,000/- per month, otherwise it amounts to neglecting the ground of reality. Similarly those who have completed M.Tech., MCA., MBA., the income of such persons can be fixed a little higher i.e., at Rs. 15,000/- per month. This will take care of the additional income which they would have earned in course of their service.

52. In view of the above discussion, we are of the considered view that the minimum income of B.E. graduate can be fixed at Rs. 12,000/- per month.

53. The learned standing counsel for the Insurance Company argued that the claimant in O.P. No. 595 of 1996 herself averred that the monthly income of the deceased Ravi Kumar could be estimated at Rs. 7,500/- per month.

54. It has to be seen that the claimant claimed a total compensation of Rs. 15 lakhs. She has also averred that she has lost more than Rs. 10 lakhs towards future earnings of her deceased son.

55. As far as the claimants in O.P. No. 300 of 1996 are concerned, they have also claimed a total compensation of Rs. 15, lakhs and averred that the deceased

would have earned more than 15 lakhs as an Engineer in any private or government institution. They did not state as to what would be the monthly income of the deceased.

56. Coming to the evidence of the witnesses, PW-1, the father of the deceased Prashanth Reddy, deposed that the deceased would have earned a sum of Rs. 25,000/- to Rs. 30,000/- per month. Similarly PW-2, the mother of the deceased Ravi Kumar, deposed that her son would have earned Rs. 2 lakhs per month. It is not correct to determine the admission by picking one sentence from the pleadings. The entire pleadings and the evidence and the whole statement of a party have to be taken into consideration for determining whether a particular sentence amounts to an admission or not. In view of the same, we feel that much importance need not be given to the averment of the claimant in O.P. No. 595 of 1996 with regard to the monthly expected earnings of the deceased.

57. As per the Sarala Verma's case (supra), since both the deceased were bachelors, 50% of the income has to be deducted towards their personal expenses and therefore, the loss of contribution to the dependants comes to Rs. 6,000/- per month and Rs. 72,000/- per annum (Rs. 6,000/- x 12) and after applying the relevant multiplier "15" as per Sarla Verma's case (supra), the total compensation comes to Rs. 10,80,000/- (Rs. 72,000/- x 15).

58. Therefore, the claimants in each O.P. are awarded a sum of Rs. 10,80,000/-. The claimants are also entitled to Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss of estate. The claimants are entitled to interest on the enhanced amount @ 9% per annum from the date of filing the petition till the date of realization.

59. In the result, both the Appeals are allowed in part to the extent indicated above. No order as to costs.