
(2010) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : MACMAMP No. 3761 of 2010 in MACMA No. 865 of 2005

G. Aravind Kumar Rao

APPELLANT

Vs

Md. Sadat Ali and United India Insurance Co Ltd.

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
English Road Traffic Act, 1930 — Section 36(1)
Evidence Act, 1872 — Section 73
Motor Vehicles Act, 1988 — Section 108, 149, 155, 158(6), 166
Succession Act, 1925 — Section 306

Citation : (2010) 09 AP CK 0017

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Hari Mohan Reddy, for the Appellant; A. Rama krishna reddy, for the Respondent

Judgement

Ghulam Mohammed, J.—Appellant filed claim petition in O.P. No. 1256 of 2002 on the file of the IV Additional Chief Judge -cum- Motor Accident Claims Tribunal, City Civil Court, Hyderabad, seeking compensation of Rs. 3,00,000/- u/s 166 of the Motor Vehicles Act, 1988 (for short - the Act"), for the injuries sustained by him alleging that on 06.03.2002 while he, along with his friend Shailender, was proceeding on his Hero Honda Motor cycle bearing No. AP-28-AC-54 to college on left side of the road slowly and reached near Raasi Ceramics at about 09.30 AM, a Jeep bearing No. AP-5-T-2571, owned by first Respondent and insured with second Respondent, came in opposite direction being driven at high speed, in a rash and negligent manner, dashed the motorcycle and caused injuries to both of them. According to him, he sustained fractures to his right leg and crush injuries and other blunt injuries all over the body. He claims that by the time of accident he was studying Engineering III year and was earning Rs. 3000/- per month by imparting tuitions. Because of the accident, he was bed ridden and lost the academic year as well as income and incurred huge expenditure towards medical treatment, extra nourishment, nursing and transport. The first Respondent filed

counter denying the manner of accident. The second Respondent filed counter denying the age and income of the Appellant and also the negligence attributed on the part of the jeep driver. The second Respondent also sought protection u/s 149 of the Act and relying on the decision in *R.D. Hattangadi v. Pest Control India (P) Ltd.* I 1995 ACC 281 (SC) contended that the claimant is not entitled to any interest on non-pecuniary damages and loss of future income. Based on the said pleadings, the Tribunal framed the following issues for trial.

- (1) Whether the Petitioner sustained injuries due to rash and negligent driving of 1st Respondent's lorry?
- (2) Whether the Petitioner is entitled for compensation, if so, to what amount and from whom?
- (3) To what relief?

On behalf of the claimant, P.Ws.1 to 3 were examined and Exs.A. 1 to A.8 were marked. On behalf of the Respondents, R.Ws.1 and 2 were examined and Exs.B.1 and B.2 were marked. Considering the material on record, the Tribunal, holding that the claimant sustained injuries due to the rash and negligent driving of the jeep involved in the accident which belongs to the first Respondent, awarded Rs. 72,800/- as compensation to the claimant with proportionate costs and interest at 9% per annum from the date of petition till the date of realization. Aggrieved by the compensation awarded to him, the claimant preferred the present appeal.

2. During pendency of the appeal, the claimant filed MACMA MP No. 3761 of 2010 with a prayer to enhance the claim amount from Rs. 3,00,000/- to Rs. 9,00,000/- in view of the grievous fractures and disability sustained by him. It is also alleged that because of the accident he lost one precious academic year and, even after completion of B.Tech (EEE), lost employment opportunities in many organizations like Ordinance Factory, Vijay Electricals etc. due to the permanent partial disability sustained by him whereas his classmates are drawing salaries ranging from Rs. 4,00,000/- to Rs. 7,00,000/- per annum. The second Respondent filed counter resisting the application mainly on the ground of its maintainability apart from various other grounds. It is stated that though the first Respondent, the owner of the jeep involved in the accident who entered appearance and contested the matter before the Tribunal, expired during pendency of the appeal, No. steps are taken to bring on record his legal representatives and, therefore, the appeal stands abated. Further, in the cause title itself the claimant mentioned that the first Respondent is not a necessary party to the application and the settled law is that the liability of insurance company arises only when the insured has liability. In support of the said contention reliance is placed on the *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, wherein it is held that the insurance company cannot be made liable without mulcting the liability on the insured and that the liability of insurer arises for the purpose of indemnifying the insured under the contract of insurance when

the liability of the insured has been upheld.

3. Sri K. Harimohan Redy, learned Counsel appearing for the claimant, vehemently contended that the Tribunal has grossly erred in assessing and awarding the just and fair compensation as it failed to take into consideration the fact that the claimant was a B.E. III year student at the time of accident and because of the accident he lost one precious academic year apart from employment opportunities on par with his classmates. The Tribunal also failed to take into consideration the pain and suffering to be suffered by him through out the life and grant sufficient amount towards the permanent partial disability and discomfort. He contended that a liberal approach is to be adopted in awarding the compensation for the injuries sustained. It is also stated that albeit the award of compensation should not be like a windfall, yet it should not be a pittance and should be fair and reasonable so as to justify the pain and suffering and the nature of disability. In support of the said contentions, he placed reliance on the decisions in Nagappa Vs. Gurudayal Singh and Others, , State of Haryana and Another Vs. Jasbir Kaur and Others, , Suresh v. Lokeshagouda AIR 1998 KAR 17 , Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, , United India Insurance Co. Ltd. Vs. Syed Shakeel Pasha and Another, , B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, and R. Kamala Vs. Shaik Mohd. Ghouse and Another,

He also contended that the decision in the case of Sunita Rathi case (2 supra), relied on by the learned Standing Counsel for the insurer, has No. application to the facts of the present case because in that case their Lordships were deciding the question whether the insurance company is liable when the cover note, which contains an express mention that the effective date and time of commencement of insurance is 2.55 PM on the date of accident, was obtained by the insured sometime after the accident but on the same day. Whereas, in the instant case, the insurance policy is in force as on the date and time of the accident and its enforceability is not in dispute. He also placed reliance on Sections 149 and 155 of the Act to state that the death of the claimant, during pendency of the appeal, is not a bar to maintain the claim or enhanced claim petition, as the liability of insurer is coextensive with that of the insured. The learned Counsel submits that the basis for enhancement of compensation is only the material available on record and No. additional evidence is required to deal with the same so as to give an opportunity to the insurer to oppose the said claim.

4. Sri A. Ramakrishna Reddy, learned Standing Counsel appearing for the insurer, placing reliance on Sunita Rathi case (2 supra) and Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, vehemently contended that the settled law is that the liability of insurer arises only when the insured is liable and, moreover, the Tribunal awarded more compensation than what the claimant is entitled to and so there is No. need to interfere with the same. He vehemently contended that in any case the application filed for enhancement of the compensation is liable to be rejected on the ground of its very maintainability, as

the legal representatives of the claimant are not brought on record. It is contended that the claimant has not adduced any additional evidence as a basis for enhancement of compensation. Moreover, except the ipse dixit of the claimant No. evidence whatsoever has been produced to prove his income and therefore the Tribunal has rightly treated him as a non-earning member. The learned Standing Counsel also disputed the signature of the claimant in the enhancement petition as not that of the claimant.

5. The points that arise for consideration in this appeal are-

(i) Whether the compensation awarded by the Tribunal is just, if not, to what compensation is the Appellant entitled?

(ii) Whether the relief of enhancement of the claim amount from Rs. 3,00,000/- to Rs. 9,00,000/- sought by the claimant in MACMA MP No. 3761 of 2010 is liable to be allowed?

6. A perusal of the impugned award makes it clear that the Tribunal awarded Rs. 27,500/- towards medical expenses, Rs. 1,300/- towards attendant charges, Rs. 2,000/- towards extra nourishment, Rs. 2,000/- towards transport charges, Rs. 10,000/- towards pain and suffering and Rs. 30,000/- towards the injuries sustained by him, making it a total of Rs. 72,800/-. The Tribunal disbelieved the evidence of P.W.2, the Doctor working in the Nizam's Institute of Medical Sciences (NIMS), who issued Ex.A.5 disability certificate showing that the claimant suffers from 25% partial permanent disability. The Tribunal also disbelieved the evidence of P.W.3, who was examined to show the income of the claimant and who deposed that he used to pay Rs. 500/-per month towards tuition fee of his children and there were about 20 to 25 students attending the tuitions of the claimant, as a witness planted for the purpose of this case in view of the answers elicited from him in cross-examination.

7. At the outset, it is pertinent to look into what Sections 149 and 155 of the Act say. Section 149 of the Act envisages the duty cast upon the insurers to satisfy judgments and awards against persons insured in respect of third party risks. Section 155 of the Act envisages the effect of death on certain causes of action. According to Section 155, notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (39 of 1926), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. From a reading of the above provisions of law, it is evident that the primary liability is that of the insured and the insurer comes into picture to indemnify the liability of the insured. There cannot be any dispute on this basic proposition. The Act, being a beneficial piece of legislation, has to be read and understood basing on the facts and circumstances of the case.

8. In Nagappa case (3 supra) it is held that-

7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is No. restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to Sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as Respondents to the application for compensation. Other important part of the said Section is Sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though No. such claim is made or No. specified amount is claimed.

9. It appears that due importance is not given to Sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under Sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be just". There is No. other limitation or restriction on its power for awarding just compensation.

11. Secondly, u/s 169, the Claims Tribunal in holding any inquiry u/s 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rule 254 inter alia makes specific provision that Order 6, Rule 17, CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for

amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is not necessary for the purpose of determining real issue between the parties, Court would grant amendment. It is also to be stated that under the M.V. Act there is No. time limit prescribed for claiming compensation. Therefore, there is No. question of enhanced claim being barred by limitation.

14. In case, where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is No. reason why such amendment or enhanced compensation should not be granted. In such cases, there is No. question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only Question is - application of law as it stands.

16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is No. evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

9. In Jasbir Kaur case (4 supra) it is held that -

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 fairness, equitability and reasonableness and non-arbitrariness. If it is not so it cannot be just. (See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another,

10. In Suresh case (5 supra), a learned single Judge of High Court of Karnataka, when the insurance company sought the appeal to be dismissed in view of the death of driver of the vehicle and nobody has been brought on record as his legal representative, observed that -

8...The Insurance Company has taken the liability to pay the amount decreed jointly and severally and therefore claim for enhancement can be considered with reference to the owner of the vehicle who is primarily liable to pay the amount. The Insurance Company is also there to reimburse the owner. The Driver is an employee of Respondent No. 2 and evidence is that there was rash and negligent driving by him. The Insurance Company being also liable to the extent the liabilities covered by the Policy, in my opinion abatement of the Appeal against the Driver on account of his death will not affect the maintainability of appeal in view of the fact that substantive responsibility of payment of Compensation awarded is of owner of Vehicle and along with that it will be of Insurance Company. Even if the insured (owner) would have died cause of action for claim or enhancement of claim against the estate of insured and against the Insurance Company would have survived u/s 155 of the Motor Vehicles Act 1988. Section 155 of Act 1988 reads as under:

Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (39 of 1926), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Thus there is No. force in this contention of objection of Respondent. The contention of Respondent is rejected. Thus the Appeal survives for decision on merits. 11. In M. Chakra Rao case (6 supra), a Division Bench of this Court, at para-12, held that the statutory liability of the Insurance Company, in the absence of the owner of the vehicle, in the appeal filed by the claimants, can be decided and maintainable as held in the case of The Branch Manager, The New India Assurance Co. Ltd. Vs. Harijana Babakka and Others, for fixing the statutory liability and the presence of the owner at the appellate stage is not necessary.

12. In B. Ramulamma case (8 supra), a Division Bench of this Court, in para-50, held that 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; that 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; that, as far as the students, who completed or in final year or last semester of B.Tech., B.E., B.C.A., M.Tech., ME., MBA, MCA 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, however, 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.

13. In R. Kamala case (9 supra), a Division Bench of this Court, while dealing with the question whether in the absence of the insured in the appellate proceedings or failure on the part of the Appellant in bringing the legal representatives of the deceased insured during the pendency of the; appeal, can the court fix the statutory liability against the insurer, following the decision in M. Chakra Rao case (6 supra), held that the cause of action in the event of death of the insured would still survive against his estate or against the insurer.

14. In Sunita Rathi case (2 supra), relied on by the learned Counsel for the insurer, it is held that -

3. It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point.

15. In Minu B. Mehta case (10 supra) it is held that -

23. The purpose of enactment of Road Traffic Acts and making insurance compulsory is to protect the interests of the successful claimant from being defeated by the owner of the vehicle who has not enough means to meet his liability. The safeguard is provided by imposing certain statutory duties namely the duty not to drive or permit a car to be driven unless the car is covered by the requisite form of third party insurance. Section 94 of the Act provides that No. person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter. Section 95 of the Act is very important and that specifies the requirements of policies and limits of liability. Section 95(1)(a) and (b) of the Act are extracted. They run as follows:

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-(a) is issued by a person who is an authorised insurer or by a cooperative society allowed u/s 108 to transact the business of an insurer, and (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-(i) against any liability which may be incurred by him in respect of the death or of bodily injury to any person or damage to any property of a third party caused by or arising out of the use of

the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

X X X X X

Under Section 95(1)(b)(i) of the Act it is required that policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. It may be noted that what is intended by the policy of insurance is insuring a person against any liability which may be incurred by him. The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is No. liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or the insurance company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. It is significant to note that under Sub-clause (ii) of Section 95(1)(b) of the Act, the policy of insurance must insure a person against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. u/s 95(1)(b) Clause (ii) of the Act the liability of the person arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36 (1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. The expression "liability which may be incurred by him" is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy.

16. Therefore, having regard to the provisions of the Act extracted above and the decisions relied on by the learned Counsel for both sides, it can be safely held that the statutory liability of the insurance company, even in the absence of the owner of the vehicle involved in the accident, in the appeal filed by the claimants, can be decided and maintainable and, for fixing the statutory liability of the insurer, the presence of the owner at the appellate stage is not necessary and the cause of action in the event of death of the insured would still survive

against his estate or against the insurer.

17. Coming to the aspect that the signature of the claimant in the enhancement petition is not that of the claimant, u/s 73 of the Indian Evidence Act, 1872, the Court has power to compare the disputed signatures with the admitted signatures and come to a conclusion. I have compared the disputed signatures of the claimant on the affidavit in the enhancement petition with the admitted signature of the claimant in the claim petition signed by him in 2002. Though there is a slight variation in the signature appearing in the enhancement petition from the signature appearing in the claim petition, it need not be given much weightage because the signature on the claim petition is obtained in the year 2002 and the signature on the affidavit in the enhancement petition is obtained in 2010 and there is a gap of eight years. After lapse of eight years, there can be a slight variation in the signature and so the contention of the learned Standing Counsel in this regard is rejected.

18. Coming to the compensation aspect, as rightly pointed out by the learned Counsel for the Appellant-claimant, the Tribunal did not take into consideration the permanent partial disability of the claimant to be 25% disbelieving the evidence of P.W.2, the Doctor who issued the disability certificate, and also failed to take into consideration the fact that the claimant is a B.E. III year student at the time of accident and because of the accident he lost one precious academic year apart from employment opportunities on par with his classmates for awarding just and fair compensation. I do not find any reason to disbelieve the evidence of P.W.2 the Doctor who treated and issued the disability certificate, as he happens to be a Doctor from NIMS. P.W.2 deposed that the Appellant-claimant was admitted in NIMS on 06.03.2002 with a crush injury to right foot, compound comminuted fractures to 2 & 3 metatarsal, and degloving of dorsum of right foot; that the right foot was operated and skin grafting was done on 07.03.2002; that he was discharged on 18.03.2002 and later he was treated as an out-patient; that he cannot walk long distances without the help of a hand-stick; that his ankle movements are restricted and the second and third fingers of right foot are not functioning and he was treated by a team of doctors under his supervision. He assessed the disability to be 25% and the injuries are grievous in nature. It seems the Tribunal has not accepted the disability certificate merely because it was not issued by a Competent Board. Therefore, I have No. hesitation to take the permanent partial disability of the claimant to be 25%.

19. Further, the Tribunal has not even taken into consideration the fact that the claimant was a B.E. III year student at the time of accident and, because of the accident, he lost one precious academic year apart from employment opportunities on par with his classmates for awarding just and fair compensation. The Supreme Court in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, observed as under:

The determination of compensation in respect of injury cases must be liberal and the amount of compensation so awarded should not be niggardly and at the

same not a wind fall as a profit making venture through the Tribunals or Courts. When the compensation is awarded by the Courts and Tribunals even the tortfeasor should feel that he is atoned for the sin committed by him in committing the accident robbing the precious life of a human being and injuring the innocent person for No. fault of his and the guidelines from such precedents is only to emphasise that if there are two precedents dealing with the same question of assessing the compensation, the one which has adopted a liberal approach should be preferred than the one which has adopted the conservative approach.

Therefore, in the facts and circumstances of the case, keeping in view the judgment of this Court in B. Ramulamma case (8 supra), I take the notional income of the claimant as Rs. 8,000/- per month which annually comes to Rs. 96,000/-. The age of the claimant is stated to be 21 years by the time of accident. As per the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the appropriate multiplier for the age of the claimant is "18". Therefore, the loss of future prospects and earnings of the claimant due to permanent partial disability can be assessed as Rs. 96,000/- x 25% x 18 = Rs. 4,32,000/-.

20. With regard to pain and suffering the Tribunal granted only Rs. 10,000/-. In view of the evidence of P.W.2, I am inclined to enhance the same to Rs. 20,000/-. However, I am not inclined to disturb the amounts granted under the other heads and the same shall remain unaltered.

21. Therefore, the Appellant-claimant is entitled to a compensation of Rs. 4,32,000/- towards loss of future prospects and earnings due to permanent partial disability + Rs. 27,500/- towards medical expenses + Rs. 1,300/- towards attendant charges + Rs. 2,000/- towards transport charges + Rs. 2,000/- towards extra nourishment + Rs. 20,000/- towards pain and suffering + Rs. 30,000/- towards the injuries sustained by him, making it a total of Rs. 5,14,800/-. However, the rate of interest on the enhanced compensation shall be at the rate of 7% per annum.

22. Since the claimant is held to be entitled to Rs. 5,14,800/- towards compensation for the injuries suffered by him in the accident, and the same being higher than the amount of Rs. 3,00,000/- claimed before the Tribunal, the application for enhancement of claim amount is liable to be allowed. Therefore, MACMA MP No. 3761 of 2010 is allowed.

23. One of the contentions of the learned Counsel for the insurance company before the Tribunal was that the driver who drove the jeep did not hold any valid and subsisting driving licence at the material time and, therefore, No. liability to pay compensation to the claimant can be fastened on the insurance company. Incidentally it is also his submission that the first Respondent who took part in the proceedings including the trial by cross-examining the witnesses examined by the claimant, still the driver did not step into box, despite making efforts by it, to show that he has valid and subsisting driving licence at the material time

and, consequently, the second Respondent is not liable to indemnify the owner of the accident vehicle. After discussing various judgments at length and taking into consideration the steps taken by the second Respondent for proving that the driver of the offending vehicle was not holding valid and subsisting driving licence, held that the second Respondent performed the obligation cast on it and, therefore, it cannot be found fault with and No. liability can be fastened on it directly. However, following the ratio laid down by the Apex Court in National Insurance Company Ltd. v. Swaran Singh 1 (2004) CLT (SC), relying on clauses 9 and 10 of para-109 therein, though passed the award against the first Respondent, obligated the second Respondent with the duty of payment of amount and then recover it from the first Respondent by obtaining a "Certificate" from the Tribunal. Since this is an appeal by the claimant seeking higher compensation than what is awarded by the Tribunal and since at No. point of time in the appellate proceedings it is not the case of the second Respondent that it is not liable to pay the compensation at first and later recover it from the first Respondent, who died during pendency of the appeal, and since there is No. cross-appeal by the second Respondent regarding the observation made by the Tribunal on this aspect, I am of the opinion that the same observation needs to be maintained here also.

24. Therefore, the appeal is allowed-in-part. The award of the Tribunal is modified and an award is passed for Rs. 5,14,800/- with proportionate costs before the Tribunal with interest at 9% per annum on Rs. 72,800/- from the date of the petition till the date of realization and with interest at 7% per annum on Rs. 4,42,000/- enhanced in this appeal from today till the date of realization, in favour of the claimant and against the first Respondent and the second Respondent is obligated with the duty of payment of compensation to the claimant first and then recover it from the estate of the first Respondent. The parties shall bear their own costs in this appeal.