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(2014) 12 AP CK 0159

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 378 of 2008 and Cross Objections (SR) No. 9375 of 2008

National Insurance Company Limited and Others — APPELLANT

Vs

Manne Laxmi and Others — RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 146, 146, 146, 147, 147

Citation : (2014) 12 AP CK 0159

Hon'ble Judges : B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; V. Satyam Reddy and K. Madhava Reddy, for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.?The 2nd respondent insurer among the 4 respondents, preferred the appeal impugning the award of the Tribunal in O.P. No. 984 of 2004 dated 28.03.2007, in the claim filed by the claimants under Section 166 of the Motor Vehicle Act, 1988 (for short, ''the Act'') viz., by mother, younger sister and younger brother of deceased M. Swapna, though they are not dependents on deceased spinster but for to say 1st claimant-mother is sole dependent, claiming compensation of Rs. 10,00,000/- since awarded by the Tribunal of Rs. 2,20,000/- with interest at 7.5% p.a. with joint liability against the owner of the bus bearing No. AP 28 U 3925, the insurer (appellant herein) and the A.P.S.R.T. Managing Director and Depot Manager respectively, with contentions in the grounds of appeal by the insurer supra, wherein the claimants are shown as Respondent Nos. 1 to 3, (owner of the bus and the R.T.C Lessee shown as Respondent Nos. 4 to 6) that the Tribunal gravely erred in fixing joint liability on the insurer though it is A.P.S.R.T.C i.e., the lessee from the original owner that is liable to pay compensation, that Tribunal also erred in not adopting multiplier 11 i.e., the just multiplier from the age of the deceased, otherwise Tribunal should have followed Section 163-A of the M.V. Act for the reason even annual income above Rs. 40,000/- also as held by the Apex Court in several

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expressions that is not a bar to the application of Section 163-A, the trial Court failed to follow the expressions of the Apex Court in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., to fix liability on the R.T.C alone, that the quantum of compensation also excessive and unjust, hence to set aside the award and exonerating the insurer.

2. In the course of hearing arguments, the learned counsel for the insurer appellant besides reiterating the same drawn attention of the Court to the recent expression of the Apex Court in Purnya Kala Devi V. State of Assam 2014(1) Decisions Today 122 in saying as per the said expression and from reading of Section 2 Sub-section 30 of the M.V. Act, 1988, R.T.C. the lessee alone is the owner and not the original owner in whose name the vehicle registered and once there is liability for the owner, the question of fastening liability on the appellant-insurer does not arise. Hence on that counts also to exonerate the insurer by allowing the appeal sought for.

3. The claimants filed cross-objections impugning the quantum of compensation in seeking as prayed for before the Tribunal to allow and also with the submissions that the award of the Tribunal holds good, for this Court while sitting in the appeal, there is nothing to interfere in fixing the joint liability but for enhancement of compensation.

4. Whereas, it is the contention of the learned counsel for the A.P.S.R.T.C that the award of the Tribunal holds good and the proposition of Purnya Kala Devi supra has no application for not referred the earlier expressions of the Apex Court besides not laying down any principle that the lessee alone liable and lessor is liable to be exonerated, but for to say the facts are entirely different in fixing liability on the State of Assam as per the provisions of the Act referred therein, hence to dismiss the appeal as well as cross-objections in saying nothing to interfere either on the quantum or on the joint liability.

5. Heard. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

6. Now the points that arise for consideration in the appeal are:

1. Whether the award of the Tribunal fixing joint liability on the insurer and original owner along with the A.P.S.R.T.C lessee of the crime vehicle is unsustainable and the quantum of compensation is unjust either excessive or utterly low and with what observations?

2. To what result?

POINT No. 1:

7. No doubt the manner of accident speaks that the deceased along with family members were traveling in Maruthi Van bearing No. AHX 1737 from Toopran village to Hyderabad and the crime bus while proceeding in opposite direction, the bus dashed the van. To say that there is any contributory negligence, merely

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because both vehicles proceeding in opposite direction, there is no independent evidence from the Respondents R.W-1 Depot Manager of the R.T.C and even Ex.B-1 rough sketch of scene of offence observation report, no way shows any contribution on the part of the driver of the Maruthi Van, where the deceased was traveling. The F.I.R and the charge sheet are against the driver of the bus. The M.V.I. report also no way improve the contention of the respondents to the claim petition of there is any contribution of the accident by the van driver apart from it, there is nothing to disbelieve the version of P.W-2 eye witness to the accident of the manner of accident who is no other than inmate of the van. Thus, there is no substance in the contention of Tribunal went wrong in not taking consideration of the contributory negligence, for no contributory negligence on the part of the van driver even for this Court while sitting in appeal to fix.

8. Before coming to the dispute against fixation of liability on the 3rd respondent-APSRTC and not fixing the liability jointly against the respondents 1 and 2 being original owner (insured) and insurer of the hired bus and the quantum of compensation whether excessive and what is just compensation in the factual matrix of the case concerned, it is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965 (1) All.E.R. 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in Charle red House Credit v. Tolly 1963 (2) All.E.R. 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in Parry v. Cleaver 1969 (1) All.E.R 555 observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in R.D. Hattangadi v. Pest Control (India) Private Limited 1995 ACJ 366 (SC) - CA Nos. 1799 & 1800 of 1989 with SLP (Civil) 4586 of 1989 at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of

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the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

9. Now, coming to the liability, the 1st respondent in claim petition is the owner of the bus bearing bus No. AP 28 U 3925 which was hired with the 3rd respondent-APSRTC insured with 2nd respondent-Insurance Company covered by Ex.B-1 policy. The 3rd respondent-APSRTC no doubt exercising control over the bus including on the driver of the bus by engaging its own conductor under the contract of hire. The question is whether that by itself exonerates the real owner and the insurer though APSRTC is a limited owner within the meaning of Section 2(30) of the Act so long as the contract of hire in force and given full control of the bus if it is with or without knowledge of the insurer of the vehicle insured by the owner and not by APSRTC.

10. In this regard the Apex Court in Uttar Pradesh State Road Transport Corporation Vs. Kulsum and Others, by referring to Section 146 to 149, 157 read with Section 2(30) of the M.V. Act, 1988 regarding the third party risk from the statutory insurance on the scope and meaning of who is owner of a hired vehicle when the policy taken out by lesser and transferred the vehicle to the lessee covered by terms of lease held that

"The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of third parties. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.

Third party rights have been considered by this Court and several expressions and the law on the said point is now fairly well settled."

10(a). The Apex Court in Guru Govekar Vs. Miss Filomena F. Lobo and Others, held that

"Thus if a policy is taken in respect of a motor vehicle from an insurer in compliance with the requirements of chapter VII of the Act, the insurer is under an obligation to pay the compensation payable to a third party on account of any injury to his/her person or property or payable to the legal representatives of the

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third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. The liability to pay compensation in respect of death of or injury caused to the person or property of a third party undoubtedly arises when such injury is caused when the insured is using the vehicle in a public place. It is also arises when the insured has caused or allowed any other person (including an independent contractor) to use his vehicle in a public place and the death of or injury to the person or property of a third party is caused on account of the use of the said vehicle during such period, unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident.

This meant that once the insurer had issued a certificate of insurance in accordance with sub-section (4) of Section 95 of the Act the insurer had to satisfy any decree which a person receiving injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had been served with a notice under sub-section (2) of Section 96of the Act about the proceedings in which the judgment was delivered.

Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act.

10(b). In a recent judgment of this Court, in United India Insurance Co. Ltd. Vs. Santro Devi and Others, it has been held as under:

"The provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfil the statutory requirements of formation of a valid contract but in case of a third-party risk, the question has to be considered from a different angle.

Section 146 provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person in possession of the vehicle to ply the same on road; but there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. It is not in dispute that quantum of premium paid for renewal of the

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policy is in terms of the provisions of the Insurance Act, 1938.

Perusal of the ratio of aforesaid judgments of this Court shows that Section 146 of the Act gives complete protection to the third party in respect of death or bodily injury or damage to the property while using the vehicle in public place. For that purpose, insurance of the vehicle has been made compulsory to the vehicles or to the owners. This would further reflect that compulsory insurance is obviously for the benefit of third parties.

Certificate of insurance between the owner and the insurance company contemplates under what circumstances the insurance company would be liable to pay the amount of compensation. The relevant conditions are reproduced hereinbelow:

"Rules with respect to use of the vehicle

Use only for carriage of passengers in accordance with permit (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act, 1988. This policy does not cover:

1. Use for organized racing, pace making, reliability trial, speed testing.

2. Use whilst drawing a trailer except the towing (other than to reward) of any one disabled mechanically propeller (sic propelled) vehicle.

Persons who are qualified to use the vehicle:

Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner''s licence may also drive the vehicle when not used for transport of passengers at the time of the accident and such a person satisfies the requirement of Rule 3 of the Central Motor Vehicle Rules, 1989.

Perusal thereof would show that there has not been any violation of the aforesaid terms and conditions of the policy. The respondent Insurance Company has also failed to point out violation of any Act, Rules or conditions of insurance. The Insurance Company has no legal justification to deny the payment of compensation to the claimants.

In the light of the foregoing discussions, the appeal filed by the Insurance Company fails, wherein it has been directed that the amount would first be paid by the Company, with right to it to recover the same from the owner of the vehicle. This we hold so as the liability of the Insurance Company is exclusive and absolute.

Thus, looking to the matter from every angle, we are of the considered opinion that the Insurance Company cannot escape its liability of payment of compensation to third parties or claimants. Admittedly, owner of the vehicle has not violated any of the terms and conditions of the policy or provisions of the

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Act. The owner had taken the insurance so as to meet such type of liability which may arise on account of use of the vehicle.

Apart from the above, the learned counsel for the Insurance Company could not point out any legal embargo which may give right to it to deny the payment of compensation. Thus, legally or otherwise, liability has to be fastened on the Insurance Company only."

10(c). From this expression it is also necessary to discuss the relevant portions

"A critical examination thereof would show that the appellant and the owner had specifically agreed that the vehicle will be insured and a driver would be provided by owner of the vehicle but overall control, along with the driver would be that of the APSRTC. Thus, the vehicle was given on hire by owner of the vehicle together with existing and running insurance policy in view of the aforesaid terms and conditions, the insurance company cannot escape its liability to pay the amount of compensation.

On account of the aforesaid discussions, it is crystal clear that actual possession of the vehicle was with the Corporation. The vehicle, driver and the conductor were under the direct control and supervision of the Corporation.

Black''s Law Dictionary defines "vicarious liability" as follows:

"Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) because of the relationship between the two parties."

So, through the above definition, it can be inferred that the person supervising the driver through the principle of respondent superior should pay for the damages of the victim."

11. From the above, for all practical purposes, for the relevant period, the APSRTC had become the owner of the vehicle during the specific hire period. If the Corporation had become the owner even for the specific period and for the limited purpose the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation. So, through the definition of vicarious liability it can be inferred that the person supervising the vehicle through the principal-respondent superior to pay the damages to the victim-third party, when it is not the case of the insurer that driver was not holding a valid licence to drive the vehicle at the time of accident. It has not also been contended that there is any violation of terms and conditions of the policy from saying driver was not entitled to drive the vehicle. The insured admittedly received the premium for third party risk for the period at the time that bus had met with accident and the bus being plied by APSRTC. No doubt the above expression in Kulsum''s case supra proceeded that there is no statutory duty cast on the owner under the Act or the Rules to seek permission or to give intimation

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to insurer in case of vehicle hired with APSRTC for it is being plied to say any violation, the insurer cannot escape the liability muchless any legal justification to deny the payment of compensation to the third party claimants. In fact Section 157 of the Act provides that the insured-owner in the event of transfer of ownership of the vehicle also deemed transferred the certificate of insurance (policy) w.e.f. date of vehicle ownership with rights and liabilities of the policy. Further that the transferee shall apply within (14) days of transfer of vehicle ownership to the insurer for making necessary changes in the certificate of insurance (policy). The term transfer is not defined in the Act but for the term owner in Section 2(30) that includes person in possession of hire purchase or lease or hypothecation agreement. The Apex Court in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, held the non-intimation of transfer of ownership even no way exonerates insurer from liability but for saying on that case the insurer can recover from insured or transferee. That expression is not relating to lease but alienation of ownership rights by sale. Section 157 of the Act from reading of the expression in Kulsum supra to say not applicable to hiring of vehicle but for transfer by sale, though it was not so held in specific terms, in holding of rights, conceded by counsel for insurer of no specific provision of intimation to insurer about hiring and any non-intimation to exonerate the insurer. It is because the liability of the insurance company is exclusive and absolute to the third party from the Act policy even, leave about any other specific coverage of risks.

12. Apart from the above expression in the Full Bench judgment of this Court [in LPA No. 206 of 2000, dated 20.11.2012] in APSRTC Vs. B. Kanakaratnabai and others it was held that

"The only question that arises for consideration is as to whether the compensation payable in respect of third party claims arising out of accident, involving insured vehicle hired by the APSRTC, should be borne by the owner of the vehicle or by the insurance company or by the APSRTC or by some or all of them?

A similar question as to whether the compensation payable in respect of the claims arising out of accident involving insured but hired by the APSRTC should be borne by the owner of the vehicle or by the Insurance Company or by the APSRTC or by some or all of them was referred to a Full Bench of this Court and the Full Bench in L.P.A. No. 206 of 2000 and batch vide common judgment, dated 20.11.2012 held that mere hiring of insured buses by the owners to the APSRTC would not in any manner limit the liability and accountability of the insurance companies, be it under the Act of 1988 or the Act of 1939, to honour passengers/third party risks covered by the Insurance policies issued by them in favour of the owners and notwithstanding the hiring of insured buses by the owner to the APSRTC, the Insurance Company shall be solely and exclusively liable for payment of the compensation arising out of such passengers/third party claims unless any of the grounds in Section 149(2) of the Act of 1988/Section

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96(2) of the Act of 1939 are made out.

Therefore, we are of the opinion that the issue raised in this appeal by the APSRTC is squarely covered by the Full Bench judgment of this Court.

Having regard to the facts and circumstances of the case, the appeal is allowed setting aside the order dated 22.03.2010 passed in O.P. No. 904 of 2008 by the Tribunal, in so far as dismissing the same as against the owner and insurance company. The 8th respondent insurance company is directed to honour the claim of respondents 1 to 6 herein as ordered by the Tribunal notwithstanding hiring of the said vehicle by the owner in favour of the APSRTC, as it is solely and exclusively liable to pay compensation arising out of the third party claims."

13. In the expressions of Kakanaratna Bai''s case supra and Rikhi Ram''s case supra also referred and held at para 81 that

"It is however to be noticed that in all the cases, premium towards liability towards passengers and third party risk was collected. Once separate premium was collected by the Insurance Companies for covering the risk to the passengers and third parties, it is no longer open to them to escape their liability in this regard. The failure in paying the additional premium as per IMT.44, at best, would absolve the Insurance Companies from covering the liability and loss, if any, of the APSRTC. It would not extend to protect the Insurance Companies from their acknowledged liability towards third parties as is evident from the policy documents. The Supreme Court in Rikhi Ram''s case (supra), in no uncertain terms, held that whenever a vehicle covered by an Insurance Policy was transferred to a transferee, the liability of the insurer would not cease so far as the third party/victim is concerned, even if the owner or purchaser did not give intimation as required under the provisions of the Act. The cases on hand stand on a better footing as the insured, being the owner of the vehicle, did not transfer the title or ownership of the vehicle but only its possession. IMT.44, as pointed out earlier, has application when the hirer of the vehicle requires protection and it does not apply to or abridge the liability of the Insurance Company insofar as third party risks are concerned.

14. The above propositions of law thus crystallizes the issue on hand to the conclusion that even the APSRTC, for the limited purpose during the agreement of hire in force, having control over the bus as well as the driver that belongs to the owner by engaging its own conductor in plying the bus to a limited extent as owner, the real owner is always the original person who hired the bus and owned the bus registered in his name and once the insurance company insured the vehicle by impugning for its hiring even not intimated, the insurer cannot escape the liability to third parties much less can say to fasten the liability solely on the APSRTC. As the bus was taken on hire for plying by the APSRTC and from above expression of the Hon''ble Apex Court, no doubt there is something left open to say that if there is any violation of the policy terms and conditions saying that the driver of the bus was not having valid driving license at the time of accident;

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whether the insurance company is liable to be exonerated and if so, the real owner or the APSRTC limited owner can alone or both together subject to any direction to the insurer to pay and recover from real owner to be given. In the present case that aspect also does not arise even from any non-intimation of hire, for not a case of driver having no valid license and the like for pay and recovery to answer but for to say among the respondents 1 to 3 i.e., real owner and the insurer of the bus which hired to APSRTC are jointly liable and not the APSRTC.

15. Now coming to the decision of Purnya Kala Devi''s case placed reliance on by the insurer to the contention of RTC is the owner and not the hirer (original owner) concerned, as this decision did not discuss the scope of Sections 146-149 of the M.V. Act as to what is the position when vehicle is once insured, much less by referring to any of the expressions of Kulsum (when vehicle on hire), Rikhiram (when ownership is transferred); said decision will not come in aid to the Insurance Company to claim exoneration from liability for the reason that in that case one Md. Abdul Salam, registered owner of the bus (who did not at all insure the vehicle) was requisitioned by the State of Assam on Government Duty and within two days of requisition the vehicle under the control of Government while driving on the way it dashed the cyclist, who died and the vehicle for not covered by Insurance, the claim was preferred against the registered owner and State of Assam. The registered owner contended that the vehicle at the time of accident was under the requisition and control of the State Government that is only liable to pay. Whereas the State taken a converse plea that it only requisitioned the vehicle and not the owner under the provisions of Assam Requisition and Control of Vehicles Act, 1968 and the Tribunal though directed the registered owner, placing reliance on the Act, to pay compensation exonerating the State of Assam. On appeal by the claimants, the High Court of Gauhati enhanced the compensation but held that the State Government was not liable as it was not the owner. On appeal, the Apex Court by referring to Section 2(30) of M.V Act on the definition of owner held when the vehicle was not released by the State Government by serving notice in writing on the owner as contemplated by Section 5(1) of the Assam Act as such the State can be squarely covered under the definition of owner as contained in Section 2(30) of the M.V. Act and fastened the liability on the State of Assam. Despite the same, it is the contention of the learned counsel for the appellant-insurer that from Purnya Kala Devi supra once the vehicle is under control of R.T.C the Respondent Nos. 3 and 4 of the claim petition hired by the 1st respondent covered by Ex.R-3 agreement, the question of fastening the liability on the original and registered owner of the bus, the 1st respondent to the claim petition muchless to indemnify by 2nd respondent-insurer (appellant) does not arise, hence to exonerate from the above proposition in Purnya Kala Devi in saying the original owner is not liable but for the Government of Assam which requisitioned the vehicle. The contention is at the cost of repetition untenable.

16. Here, the APSRTC did not requisition the vehicle with full control but only

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taken possession without ownership to ply on hire as discussed supra in Kulsum (supra) of the Apex Court and also the full bench expression of this Court in Kanakaratna Bai (supra) though under Section 2(30) of the Act the owner in the limited purpose for the vehicle not only that who has hired to APSRTC but also the APSRTC.

17. Having regard to the above, it is the insurer to indemnify the original owner with joint liability along with the original owner as well as the APSRTC and the Tribunal was perfectly correct in rightly fixing the joint liability against the original owner, insurer and the hiree-APSRTC respondents 3 & 4 the claim for the insurer to indemnify the original owner-1st respondent as well as the hiree-3rd and 4th respondents. Accordingly, point No. 1 is answered.

18. Now coming to the quantum of compensation awarded by the Tribunal is excessive or utterly low and if so, what is the just compensation with reference to the principles in arriving just compensation referred in the expressions supra for the claim under Section 166 of the M.V. Act herein concerned; as per Ex.A11 SSC certificate the deceased was born on 23.03.1983 to say she completed 19 years and running 20th year. Here the age of the mother, which is criteria, is shown as 37 years, for which, as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier applicable is ''15''. As among the three claimants even brother and sister are not dependents on deceased but for mother, as per Sarla Verma (supra) including from para Nos. 29 to 32, half of the income is to be deducted towards personal expenses of the deceased. Coming to earnings of the deceased claimed at Rs. 5,500/- per month based on Ex.A.10 salary certificate, which is with no basis for no acquittance or other record and PW.3 even deposed with reference to alleged Ex.X4-income tax return, that is a post litem document and the same cannot be given credence. Thus, the earnings of the deceased are to be assessed from the Apex Court''s expression in Lata Wadhwa and Others Vs. State of Bihar and Others, , with reference to the date of the expression and by the date of accident by estimating the earnings of the deceased at Rs. 3,200/- per month. If half deducted towards personal expenses, it comes to Rs. 1600/- per month. The multiplier applicable is ''15'' as referred supra. Then, it comes to Rs. 2,88,000/- (Rs. 1600 X 12 X 15). Apart from it Rs. 25,000/- towards funeral expenses, Rs. 10,000/- towards loss of estate, in all it comes to Rs. 3,23,000/- is the just compensation. Accordingly, the point No. 1 for consideration is answered.

POINT No. 2:

19. In the result, the appeal filed by the Insurance Company is dismissed and the Cross Objections No. 9375 of 2008 filed by the claimants is partly allowed, by enhancing the compensation from Rs. 2,20,000/- (Rupees two lakhs twenty thousand only) to Rs. 3,23,000/- (Rupees three lakhs twenty three thousand only) with interest at 7.5% per annum from the date of petition till the date of realisation. The other terms in the award passed by the Tribunal holds good. No order as to costs.

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20. Miscellaneous petitions, if any pending in the appeal as well as in the cross-objections, shall stand closed.

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