

Hamida Khatun and ors. Vs. Loobha Tea Co. Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/139758

Court : Guwahati

Decided On : Feb-24-2004

Judge : P.P. Naolekar, C.J. and Amitava Roy, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 2(8), 2(14) and 95; [Motor Vehicles Act, 1988](#) - Sections 147, 168 and 169; [Motor Vehicles \(Amendment\) Act, 1989](#) - Sections 95; Motor Vehicles (Amendment) Act, 1994 - Sections 46, 95(1), 108, 147(1) and 147(2); Workmen's Compensation Act, 1923

Appeal No. : MAC Appeal Nos. 81 to 86 and 97 to 106 of 2000

Appellant : Hamida Khatun and ors.

Respondent : Loobha Tea Co. Ltd. and ors.

Advocate for Def. : S.S. Sharma, N. Choudhury, R.P. Sharma and T. Das, Advs.

Advocate for Pet/Ap. : R.P. Kakati, T. Das and S.S. Sharma, Advs.

Judgement :

Amitava Roy, J.

1. All these appeals arise out of a common award dated 16.6.2000 passed by the learned Member, Motor Accidents Claims Tribunal, Cachar, Silchar.

2. MAC Appeal Nos. 81-86/2000 have been filed by the claimants for enhancement of the quantum of compensation awarded, whereas MAC Appeal Nos. 97-106/2000 have been preferred by the insurer of the offending vehicle namely National Insurance Company Limited questioning the finding of the learned Tribunal that the insurer was liable to pay the compensation though, according to it, due to the breach of the conditions of the policy such a liability could not be imposed on it. The appeals were heard together as a common question of law was involved and are being disposed of by this common judgment and order.

3. We have heard Mr. T. Das, Advocate for the claimants, Mr. SS Sharma, Advocate for the insurer and Mr. N Choudhury, Advocate for the owner of the vehicle namely, M/s Loobha Tea Company Limited.

4. Briefly stated, the relevant facts are that the predecessors in interest of the claimants' in MAC case No. 91/97 and MAC case No. 100/1997 (Corresponding to MAC Appeal No. 81/2000 and MAC Appeal No. 82/ 2000) respectively and the claimants in the other claim cases (corresponding to MAC Appeal Nos. 83-86/2000) as well as others covered by the impugned award had entered into an agreement with the Manager of Kallaicherra Tea Estate belonging to the Loobha Tea Company Limited for performing an open theatre at the Kallaicherra Tea Estate in the night of 10.11.1996 on payment of Rs. 1200/-. It was agreed between the parties that the tea company would provide the conveyance for to and fro journey of the performing party for which the tea company would charge a sum of Rs. 200/-. In terms of the agreement, the predecessors in interest of the claimants in MAC case No. 91/1997 and MAC case No. 100/97 along with the claimants in other cases were returning home in the morning of 11.11.1996 after the theatre. They were travelling in a 407 Mini Truck bearing registration No. AS-10/1406 belonging to the tea company. According to the claimants, the truck was being driven in a rash and negligent manner by the respondent No. 2, the driver thereof as a result of which, it met with an accident over the Lakhicherra bridge. In the accident, two passengers namely the predecessors in interest of the claimants in MAC case No. 91/97 and 100/1997 succumbed to the injuries sustained, whereas

the claimants in the other cases sustained grievous injuries. The respective claim petitions were therefore filed under the [Motor Vehicles Act, 1988](#) claiming varying amounts of compensation.

5. The respondent-owner and the driver in spite of the service of notice did not contest the claim cases before the learned Tribunal. The insurer filed its written statement contending inter alia that the claim was not maintainable under the provisions of the Act. It was further pleaded that it had no knowledge of the accident before the receipt of the summons. The insurer denied the correctness of the statements regarding the age of the deceased and the injured and also their income. It also denied the allegation that the accident had occurred due to rash and negligent driving of the vehicle insured. It also took the plea that the owner of the vehicle did not have the valid road permit, fitness certificate, policy of insurance and registration certificate at the time of the accident. It is further stand was that the driver did not have a valid driving licence and other relevant documents and that the claims made were exorbitant and without any basis.

6. On the pleadings of the parties the following issues were framed :-

(i) Is there any cause of action ?

(ii) Is the claim maintainable in its present form ?

(iii) Whether the accident took place due to rash and negligent act of the driver of the 407 Mini Truck No. AS-10/1406 ?

(iv) Is/Are the Insurance Company/owner liable to pay any compensation to the claimant(s) ?

(v) To what relief, if any, is/are the claimant(s) entitled to and from whom ?

7. The claimants examined themselves in their respective cases and in addition three more common witnesses were examined. The claimants also exhibited and proved certain documents including FIR, Charge sheet, Postmortem report and the documents with regard to the medical treatment and expenditure, incurred in connection therewith. The insurer also examined its Branch Manager at Karimganj

as its witness. Neither the owner nor the driver either filed any written statement or examined any witness. The cases, therefore proceeded ex parte against them.

8. The learned Tribunal by the impugned award granted compensation in all the cases for amounts ranging from 7000/- to 2,21,000/-. On a consideration of the evidence on record it held that the accident had taken place due to rash and negligent driving of the offending vehicle and that having regard to the facts and circumstances of the case and the terms and conditions of the insurance policy Ext. A which was valid and in force on the date of the accident, the insurer was liable to pay the compensation. As noticed herein above, the claimants are up in appeals contending that the amounts awarded are grossly inadequate and ought to be enhanced suitably. The insurer, on the other hand, is aggrieved by the finding of the learned Tribunal that it is liable under the law to pay the compensation. No appeal, however, has been preferred by either the owner or the driver of the offending truck. As the issue raised in the insurer's appeals is pristinely legal and a decision thereon would be sufficient to dispose of the same, we propose to record the rival arguments in those appeals at this stage.

9. It has been contended by Mr. Sharma, learned counsel for the insurer that as the offending truck was insurer only for carrying goods and that the owner thereof was not authorised to carry any passenger as per terms and conditions laid down in the related insurance policy, the learned Tribunal grossly erred in law in holding the insurer liable to pay the compensation. He further argued that it being apparent from the evidence on record that the truck involved though a goods vehicle was used as a fare paying passengers carrying vehicle, the learned Tribunal ought to have held that the insurer, in terms of the policy was not liable to pay the compensation, in absence of any evidence that any excess premium was paid by the insured for carrying such passengers. The learned counsel further urged that having regard to the nature of the use to which the vehicle was subjected, it was the insured who was liable for payment of the compensation in terms of the policy and the relevant provisions of the Act and therefore, the finding of the learned Tribunal to the contrary is grossly illegal warranting interference with the award in these appeals. Mr. Sharma placed reliance on the following authorities to reinforce his arguments.

(i) (2003) 2 SCC 223, New India Assurance Co. Ltd., Appellant v. Asha Rani and Ors., Respondent;

(ii) (2003) 2 SCC 339, Oriental Insurance Co. Ltd., Appellant v. Devireddy Konda Reddy and Ors., Respondents.

10. Mr. Das, while supporting the conclusion of the learned Tribunal on this issue, has argued that the insurer had been rightly held to be liable inasmuch as the policy having been issued to cover third party risk, it was not open for the insurer to wriggle out of its liability in law. Without prejudice to the above, the learned counsel argued in the alternative that even if the insurer is held by this court to be not responsible, the amount of compensation to be ultimately awarded would still be payable by the insured owner of the offending truck and in that view of the matter, the claims arising out of the accident cannot stand defeated on any count.

11. Mr. Choudhury, learned counsel for the insured owner argued that the policy being one providing insurance cover against the third party risks as mandatorily required under the Act, the insurer was liable to pay the compensation as the premium required under the policy had been duly paid and the same was in force on the date of the accident. According to him, therefore, the finding arrived at by the learned Tribunal with regard to the liability of the insurer was sustainable and did not merit any interference by this Court.

12. In support of the claims for enhancement of the quantum of the compensation, Mr. Das has additionally argued that the learned Tribunal in computing the amounts, misread the evidence adduced as well as left out of consideration the relevant materials on record having a bearing thereon. According to the learned counsel, the learned Tribunal committed serious errors in ascertaining the monthly income of the deceased and other claimants and also erred in adopting the correct multiplier in the face of the evidence with regard to the age of the deceased and the claimants. The learned Tribunal also over looked the evidence with regard to the insurance coverage and the expenditure incurred towards the treatment thereof. He was particularly critical about the deduction of 10% of the awarded amount under the Head of uncertainties of life and also denial of compensation for loss of consortium, funeral expenses, loss of estate etc. It was further contended

that the learned Tribunal also erred in not awarding interest on the awarded amount from the date of filing of the claim petitions. Referring to the particulars furnished in the claim petitions and the evidence on record both oral and documentary, Mr. Das urged that the amounts of compensation in all cases were grossly inadequate and that the interest of justice demands that the same be suitably enhanced.

13. Controverting the above submissions, Mr. Choudhury has strenuously argued that the claimants had totally failed to adduce sufficient evidence in support of their claim and that though they were not entitled in law to the amounts awarded, the learned Tribunal on a compassionate consideration of their predicament had granted the same. According to him, the claimants had not been able to adduce any convincing evidence with regard to the age and income of the injured and deceased. No doctor had been examined to prove the injuries and the documents relating thereto. Mr. Choudhury has maintained that the claimants failed to adduce any convincing evidence to establish even a casual connection between the injuries said to have been sustained in the accident and the treatment stated to have been administered therefor. According to him, the learned Tribunal totally misconstrued the evidence and awarded the compensation merely on inferences, conjectures and surmises. He maintained that the amounts of compensation awarded were already on the higher side and the materials on record did not justify any enhancement whatsoever.

14. It would be appropriate at the outset to deal with the contentions of the insurer raised in its appeals. It is not in dispute that at the time of the accident, the offending vehicle was insured with the appellant insurer. Ext. B' which is a photocopy of the original insurance policy indicates that the vehicle was a goods vehicle/carriage for carrying goods. It also did not cover any risk arising out of the use thereof for carrying passengers except the employees of the insured. According to the policy, the vehicle was to be used only for carrying goods. Ext. A which is the renewal endorsement in the policy, demonstrates that it was in force on the date of the accident. Both these documents have been proved by the Branch Manager of the insurer appellant. Thus, that the vehicle was a goods vehicle/carriage and was issued with the appellant insurer is born out by the

materials on record.

15. It is also not in dispute that at the time of the accident, the injured claimants and the predecessors in interest of the claimants in the MAC Appeal Nos. 81 and 82/2000 were travelling in the vehicle for which Rs. 200/- was charged by the owner thereof. There is no evidence on record that the said vehicle was being used generally for carrying passengers on hire or reward. The vehicle therefore has to be considered to be a goods vehicle/carriage under the [Motor Vehicles Act, 1988](#) as amended by Act of 54 of 1994.

16. In *New India Assurance Co. Ltd. v. Asha Rani Devi* (supra), relied upon by the learned counsel for the appellant insurer, the Apex Court was seized with the question as to whether the insurer was liable to pay compensation to the dependants of the deceased passenger travelling in a goods vehicle and had died out of the bodily injury suffered in an accident involving the said vehicle. A batch of appeals involving the common issue came up for consideration of the Apex Court which comprised of three categories of cases:

(i) those covered by the provisions of the [Motor Vehicles Act, 1939](#)

(ii) those covered by the [Motor Vehicles Act, 1988](#) and prior to the amendment of 1994 and

(iii) those after amendment of 1994.

The Apex Court, recalling that by an earlier judgment, the cases under categories (i) and (iii) had already been disposed of, proceeded to answer the question vis-a-vis the cases under category (ii). After a comparison of Section 95 of the [Motor Vehicles Act, 1939](#) with Section 147 of the [Motor Vehicles Act, 1988](#) prior to its amendment in 1994 as well as thereafter and with special reference to Section 46 of the Motor Vehicles Amendment Act, 1994, it was held that the expression 'any person', appearing in Section 95(1)(b)(i) or 147(1)(b)(i) prior to the 1994 amendment did not cover either the owner of the goods or his authorised representatives being carried in a goods vehicle. The Apex Court noticed the objects and reasons of Clause 46 of the Amendment Act, 1994 for the amendment

of Section 147 and concluded that thereby the legislature intended to make it compulsory for the insurer to insure even in case of goods vehicle, the owner of the goods or his authorised representative being carried in it so as to make it liable if the vehicle met with an accident and the owner of the goods or his representative either died or suffered bodily injuries. Having held so, the Apex Court concluded that the judgment rendered in the *New India Assurance Company v. Satpal Singh*, (2000) 1 SCC 237 did not lay down the correct state of law.

17. In his supplementing judgment, His Lordship S.B. Sinha J. while concurring with the above view noticed inter alia the definition of 'goods vehicles' and 'goods carriage' appearing in Section 2(8) and Section 2(14) of the 1939 Act and 1988 Act respectively to conclude that after the 1988 Act, a goods carriage was not permitted to carry any passenger. It was held that keeping in view the provisions of the 1988 Act, the same did not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle and therefore, the insurer of such vehicle would not be liable therefor. It, was however, observed that if a liability other than the limited liability provided for under the Act was to be enhanced under an insurance policy, additional premium is required to be paid.

18. The decision of the Apex Court in *Oriental Insurance Co. Ltd. v. Devireddy Konda and Ors.* (supra), also deals with the cases arising after the 1988 Act, but before its amendment in 1994. The question posed was the same. The Apex Court, referring to the difference in the definition of 'goods vehicle' in the old Act and 'goods carriage' in the 1988 Act as well as the scheme of Section 95 and 147 of both the Acts held that the legislature's intention was to prohibit a goods vehicles from carrying any passenger and that the owner of such a vehicle was not under any statutory obligation to get the same insured for any passenger travelling in a goods carriage and consequently the insurer would not incur any liability therefor. In coming to the said conclusion, the Apex Court also noticed that in Section 147 of the 1988 Act there was no provisions similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing the requirement of insurance policy. Observing that the said Section 147 of the 1988 Act mandated compulsory coverage against the death of or bodily injury to any passenger of

'public service vehicle' and further that the proviso appearing therein made it clear that the statutory coverage in respect of drivers or conductors of public service vehicle and employees carried in goods vehicles would be limited to the liability under the Workmen's Compensation Act and that there was no reference whatsoever of any passenger in 'goods carriage', it was, held that the insurer was not liable in that case. It was thus ruled that Section 147 of the 1988 Act did not enjoin any statutory liability on the owner of a vehicle to get it insured for any passenger travelling in a goods carriage and accordingly the insurer would have no liability therefor. The view taken by the Apex Court in *New India Assurance Company v. Satpal Singh* (supra) that under the New Act an insurance policy covering third party risk was not required to include a gratuitous passenger in a vehicle irrespective to its type or class was over ruled.

19. Both the decisions referred to above deal with the cases before the 1994 amendment. The accident in the instant case had occurred on 11.11.1996 and therefore would be governed by the provisions of the Act as it stood amended by the Act 54 of 1994. It would, thus be necessary in view of the above state of law to notice Section 95 of the [Motor Vehicles Act, 1939](#), Section 147 of the [Motor Vehicles Act, 1988](#) and the Section 147 of the said Act after its amendment in 1994. Relevant extracts of Section 95 of the [Motor Vehicles Act, 1939](#), Section 147 of the M.V. Act, 1988 and Section 147 of the said Act after its amendment in 1994 are quoted below : -

'95. Requirements of policies and limits of liability.- (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 co-operative society allowed under Section 108 to transact the business of an insurer, and

(b) Insures the persons 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 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:

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee

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(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor or the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.'

'147. Requirements of policies and limits of liability.- (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; and

(b) insures the persons 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 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 :

Provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee

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(a) engaged in driving the vehicle, or

(b) it is a public service vehicle, engaged as a conductor or the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) to cover any contractual liability.'

'147. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) * * * * *

(b) insurers the persons 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 bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.'

20. It would appear therefore that in Section 147 of the 1988 Act Clause (ii) under the proviso to Section 95 of the 1989 Act was deleted. By 1994 amendment, the

words 'including the owner of the goods or his authorised representative carried in the vehicle' were added in sub Clause (i) of Section 147(1)(b). Thus, after the 1994 amendment, requirement of a policy of insurance covering the risk of the owner of the goods or his authorised representative carried in the vehicle was made statutorily compulsory while retaining the requirement of such policy to cover the risk of death or bodily injury to any passenger of a public service vehicle. Sub-clause (ii) of the proviso to Section 95 of the 1939 Act prescribing the requirement for policy to cover the risk of passenger carried for hire or reward in any passenger carrying vehicle was done away with. This clause which was deleted by 1988 Act was not restored by the 1994 amendment and instead a limited modification was made under Sub-clause (i) of Clause (b) of Section 147(i) of the 1988 Act as referred to above.

In the present state of law therefore it is not the mandate of the Act to obtain insurance coverage of any risk arising out of death or bodily injury of any passenger carried in a goods vehicle/carriage, unless such passenger is the owner of the goods being carried on his authorized representative. Having regard to Section 95 of the [Motor Vehicles Act, 1939](#) and the changes effected in the corresponding provision namely Section 147 of the 1988 Act and the amendment introduced by the 1994 amendment as well as ratio of the decisions of the Apex Court relied upon by the learned counsel for the appellant insurer as noticed hereinabove, we are therefore, inclined to hold that the insurer in the present batch of cases is not liable to pay any compensation. There is no evidence on record to establish that the appellant insurer had undertaken to cover a risk beyond those prescribed by the Act and that for such purpose, the owner respondent No. 1 had paid any extra premium. It is also not case of owner respondent No. 1 in the appeals before us. The offending vehicle being admittedly a goods vehicle and the claimants or the predecessor in interest of the claimants in MAC Appeal No. 81/2000 and MAC Appeal No. 82/2000 being neither the owner of goods nor their authorised representatives carried in the said vehicle, no liability under the Act can be saddled on the insurer for payment of compensation to the claimants and therefore, the findings to the contrary recorded by the learned Tribunal being unsustainable are hereby set aside. Consequently the appeals filed by the National Insurance Company Ltd. are hereby allowed.

21. This takes us to the appeals for enhancement of the awarded amount of compensation. Section 168 of the Act deals with the procedure to be followed by a claim Tribunal in awarding the compensation. It imposes a legal obligation of the Tribunal to determine an amount of compensation, after making an enquiry into the claim, which appears to it to be 'just'. Section 169 lays down that in making such an enquiry the Tribunal, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. The Tribunal, by the said provision of the Act has been conferred with all the powers of the civil court for the purposes set out therein. The ultimate purpose of making an enquiry therefore is to award a compensation which is just and reasonable in the facts and circumstances of the case.

22. The Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum, Appellant, v. Susamma Thomas (Mrs) and Ors., Respondents, observed on this aspect 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 had 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'..

'9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderable, 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 up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income, altogether.'

23. In its recent pronouncement, in Divisional Controller, KSETC, Appellant v. Mahadeva Shetty and Anr., Respondents (2003) 7 SCC 197, the Apex Court while examining the true purport to the expression 'just' appearing in Section 168

observed hereunder :-

'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 to it appears to be 'just'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. 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 that 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 in 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-arbitrariness. If it is not so, it cannot be just. (See *Helen C. Rebello v. Maharashtra SRTC.*)

'A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another

normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned.'

24. The preponderant judicial opinion therefore is that while assessing the amount of compensation in cases under the Act, a formulaic and a pedantic approach is to be eschewed and instead a prudent and realistic view has to be adopted. The Act being a social legislation, the purpose thereof while dealing with the claims arising out the motor accidents is to compensate the victims or their heirs and to restore them to the condition as they were before the accident as far as possible. An endeavour therefore has to be made to grant an amount which would be reasonable, fair and just. No cut and dried formula can be evolved to compute the sum and in assessing the same, some amount of guesswork and compassion would creep in. In assessing the damages, a court has to take into account many imponderable, for example, 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 up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income etc.

For the victims in an accident, the damages are assessed as pecuniary damages or and non-pecuniary damages. While the former has in its fold, expenses towards medical treatment, loss of earning etc., non-pecuniary damages include damages for mental and physical agony already suffered or likely to be suffered in future, loss of amenities of life, loss of expectancy of life, inconveniences, hardships, discomfort etc. in life. Though, it is true that no amount of compensation can restore the physical frame and condition of the injured the endeavour has to be to compensate an injured as far as money can compensate. The computation must manifest a regard for the life and limb of the victim of the accident so that the obligation cast by the law for awarding a just compensation is religiously discharged by the courts. It is, in this background that the claims for enhancement has to be tested. We propose to deal with the corresponding Motor Accidents Claims cases individually.

25. It may be mentioned at this stage that the Motor Accidents claims cases with which we are concerned and 4 other cases arising out of the same accident were analogously tried by the learned Tribunal and on the prayer made by the claimants, in addition to the claimants, 3 other common witnesses were examined in the lead case being MAC case No. 91/1997.

27. MAC Appeal No. 81/2000 (MAC No. 91/1997)

The claimants are the 2 wives and 3 minor daughters of deceased Nazimuddin. CW 1, Hamida Khatun, claimant No. 1 in her statement on oath stated that her husband died on 11.11.1996 in a motur accident involving the truck No. AS-10-1406. According to her, the deceased was a cultivator and was the Manager of a performing party with a monthly income of Rs. 6000/- to Rs. 7000/-. She deposed that the age of the deceased at the time of the accident was 40 years. She admitted to have received a sum of Rs. 50,000/- against no fault liability claim.

27. CW 2 Abdul Wahab is an eye witness of the accident. He deposed that on the date of the accident he was travelling by the Meghalaya State Transport bus. At about 8.30 A.M. the offending truck came from the opposite direction being driven in a rash and negligent manner and dashed against the railing of the Lakhicherra bridge as a result of which 125/16 occupants of the truck fell down from the bridge on the river bed which was full of big boulders and sustained grievous injuries. He stated that he along with others took part in the rescue operation and carried the injured persons to Kalain hospital.

28. CW 3, a co-passenger of CW 2 deposed in the same lines.

29. CW 4, the Process Server of the office of the District Judge, Cachar, Silchar was examined to prove the service of notice of the Motur Accidents Claims cases on the owner and the driver of the offending truck.

30. The Insurance company examined its Branch Manager as O.P. No. 1 who while admitting the insurance of the vehicle proved Ext. A the renewal endorsement of the policy and, Ext. B, the photocopy of the policy. He stated that the truck was authorised for carrying goods only and that the insured was not

authorised to carry passengers thereon as per terms and conditions of the policy.

31. The learned Tribunal on a consideration of the evidence on record accepted Rs. 2000/- per month to be the monthly income of the deceased and after using a multiplier of 15 worked out the loss of dependency to be Rs. 2,40,000/- after deducting 13 of the income towards expenses of the deceased. It, however, further deducted 10% from the computed amount towards the uncertainties of life and after adding a sum of Rs. 5000/- towards loss of estate and consortium, awarded a sum of Rs. 2,21,000/-. In doing so, the tribunal accepted the age of the deceased to be 42 years.

32. On a consideration of the pleadings of the parties and the evidence on record, we are of the view that the learned Tribunal rightly accepted Rs. 2000/- as the monthly income and the choice of multiplier as 15 as well cannot be faulted with. However, deduction of 10% towards uncertainties of life cannot be approved inasmuch as in choosing the multiplier for computing the loss of dependency, the said aspect of the matter, according to us had already been taken into account more particularly when it is clear that the Tribunal had adopted the multiplier from the table appearing in Schedule II of the Act. We are, further of the view that the amount of Rs. 5000/- towards loss of estate and loss of consortium is much on the lower side which on a reasonable estimate should be Rs. 25,000/- including funeral expenses. The principal amount awarded thus stands enhanced by Rs. 44,000/-.

33. MAC Appeal No. 82/2000 (MAC Case No. 100/1997)

The claimants are the wife, daughters and sons of the deceased Pban Tanti.

34. CW 1, Namita Tanti is the wife of the deceased. In her deposition, she confirmed that her husband died in a motor accident involving the truck on 11.11.1996 when he was returning with others from Kalaincherra Tea Estate. She stated that her husband left behind, her, two daughters and three sons who were all dependant on him. She deposed that her husband had a monthly income of Rs. 3000/- being a Agriculturist and a casual Tea Garden worker. She admitted to have received Rs. 50,000/- towards no fault liability claim.

35. The learned Tribunal on a consideration of the evidence on record accepted the age of the deceased to be 40 years and taking Rs. 1900/ as the monthly income and 15 as the multiplier computed the loss of dependency at Rs. 2,28,000/-. It further effected a deduction of 10% towards uncertainties of life and after adding Rs. 5000/- towards loss of estate and loss of consortium awarded Rs. 2,10,200/-.

36. Having regard to the materials on record, we do not find any reason to interfere with the computation of the loss of dependency made by the learned Tribunal. However, for the reasons recorded hereinabove, we do not approve deduction of 10% from such amount towards uncertainties of life. Further, according to us, Rs. 5000/- towards loss of estate and loss of consortium is on the lower side which needs to be enhanced to Rs. 25,000/- including the funeral expenses. The principal amount of compensation therefore stands enhanced to Rs. 2,53,000/-.

37. It needs to be noticed at this stage that neither the owner nor the driver of the truck in spite of service of notice had contested the proceedings before the learned Tribunal. They chose not to file appeals against the award assailing the findings and the amounts awarded. The pleaded facts in the claim petitions and the evidence on oath have remained unrebutted by the respondent owner.

38. MAC Appeal No. 83/2000 (MAC Case No. 95/97)

The claimant who claims to have been injured in the accident examined himself in support of the injuries sustained by him. According to him, he had been rendered permanently disabled thereby. He deposed that he was aged 47 years at the time of the accident and used to earn Rs. 5000/- per month from his canteen. In proof of his injuries, Ext.1, a report of the Medical and Health Officer, Kalain, CHC, Cachar, Ext. 2 a report of the Popular X-Ray Centre, Ext. 3 and 4 Discharge certificates of Silchar Medical College Hospital and Ext. 5, reports of the Associated Professor of Orthopaedics, Silchar Medical College Hospital and some prescriptions and Cash Memos Ext. 6 to 26 have been proved.

39. The learned Tribunal on a consideration of the oral as well as documentary evidence held that the claimant had suffered permanent disablement to the extent of 60% and that he is still undergoing treatment and awarded an amount of Rs. 50,000/- on account of pecuniary loss and a further amount of Rs. 50,000/- on account of non-pecuniary loss totalling Rs. 1,00,000/-. It further awarded an amount of Rs. 15000/- towards future medical expenses, thus awarding a total amount of Rs. 1,15,000/-. The Tribunal accepted the age of the injured to be 50 years at the time of the accident.

40. The learned counsel for the owner respondent had argued that the claimant ought to have examined the doctor in support of the injuries and without such evidence, the same remained unproved. According to him, only the distal part of left thumb had been amputated and therefore the claimant injured could not be said to have suffered permanent disablement to the extent of 60% as claimed. He having failed to discharge his burden, the learned counsel argued that his claim for enhancement of the awarded amount is wholly untenable.

41. It is true that in the case in hand, the claimant did not examine the doctor in support of the injuries and the documents relating thereto. But the fact remains that these documents were introduced in evidence by the claimant without any objection of the respondent owner who in spite of notice of the proceedings did not contest the same. We have examined the documents proved and exhibited in the case from which it appears that the claimant had suffered fractures in the upper shaft of femur on the right side and in the upper mid and lower shaft of the femur for the treatment of which he had to remain in the Silchar Medical college hospital for a period of one month. He had to be admitted in the hospital for follow up treatments and the certificate issued by the Associate Professor of Orthopaedics, Silchar Medical College Hospital, Silchar indicates that he had suffered permanent disablement to the extent of 60%. The prescriptions and cash memos also support the fact that the claimant injured had expended a sizeable amount towards the medical treatment. From the injuries sustained by the claimant injured, it can be reasonably concluded that he would suffer loss in earning and would be faced with the same predicament in the future as well because of the sustained effect of the injuries suffered by him. His prospects of earning has definitely lessened

substantially. In the above premises, we are inclined to enhance the principal amount of compensation awarded by Rs. 50,000/-. As the learned Tribunal has been conferred with the power to follow its own procedure in dealing with such claims and keeping in mind that the Act is a piece of social legislation, we are not inclined to uphold the contentions of the respondent owner that only because the claimant injured had not examined the doctor it is not open for the claimants, on the basis of the materials on record to urge, that the amount awarded by the learned Tribunal is in adequate and needs to be suitably enhanced.

42. MAC Appeal No. 84/2000 (MAC Case No. 160/1997)

The claimant Smt. Gita Rani Dey, injured in the accident, stated on oath that after the accident she lost her senses. According to her, she suffered injuries on the forehead, head, left eye, all over the left side of the body, left hand, etc. for which she was advised neurological treatment. She stated that because of the injuries she had become permanent disabled and her prospect of marriage has been totally lost. She deposed to have incurred Rs. 35,000/- as expenses towards her treatment. She proved and exhibited documents including medico case report, discharge certificate, medical prescriptions, cash memos etc. She claimed to be 20 years of age.

43. The learned Tribunal on a consideration of the evidence both oral and documentary concluded that for the injuries sustained by the claimant, she has suffered 50% permanent disablement. The Tribunal also made a visual estimate of the injuries over her body as exhibited by her in course of her deposition and held that skin bone grafting had also been done on her. Having considered the above aspects, along with the documents proved and exhibited by her, accepting her age to be 20 years as claimed by her, the Tribunal awarded Rs. 1,00,000/- towards medical expenses, loss of earning capacity and other material loss. An additional sum of Rs. 40,000/- was also awarded towards non-pecuniary loss including loss of chance of marriage. In all Rs. 1,40,000/- was thus awarded.

44. The stand taken by the learned counsel for the respondent owner is that as the doctor had not been examined, the injuries and the fall out thereof have not been proved in law.

45. On a bare perusal of the documents proved and exhibited in the case, it would appear that the claimant had suffered fractures necessitating skin grafting on her. The discharge certificates proved and exhibited shows that she had to be admitted several times in the Silchar Medical College hospital for treatment of her injuries. The medico legal case report also supports the fact of compound fractures and the injuries suffered seem to be grievous. The learned Tribunal recorded that the sign of other injuries are still visible on her body. Our attention has been drawn to the photograph of the claimant which clearly reveals that because of the skin grafting with multiple fractures she has suffered disfiguration of left hand. She is a young girl in early twenties and because of such injuries she has not only been permanently disabled, but her future prospects including that of her marriage have become bleak. The impact of the injuries, loss of prospects, mental pain and agony and suffering is perceivable. Because of the nature of the injuries sustained and the treatment that had followed, a sizeable amount must have been spent for the purpose. The claimant with the injuries and the resultant disablement will have to live with the same for the rest of her life. According to us, therefore, having regard to the above factors, the amount of compensation awarded by the Tribunal needs to be enhanced on a reasonable estimate. We feel that the claimant injured is entitled to a further amount of Rs. 75,000/-. The principal amount of compensation thus stands enhanced to Rs. 2,15,000/-.

46. MAC Appeal No. 85/2000 (MAC Case No. 99/1997)

The claimant Sashi Mohan Das injured in the said accident stated in his evidence that at the time of the accident his income was Rs. 3500/-per month which due to his physical incapacity following the injuries sustained had plummeted to Rs. 1000/- per month. He stated that in the accident he sustained fractures in the right clavicle and three ribs of the chest, besides sustaining grievous injuries on the head. He further stated that because of the accident, he also suffered grievous injuries on his right thigh due to insertion of one iron rod. According to him, he had been treated initially at Kalaincherra hospital. Thereafter he was referred to Silchar Medical College Hospital where he was treated as an indoor patient for 8 days. He claimed that his treatment is still going on. According to him, he expended Rs. 16000/- toward medical treatment. He stated that he was aged 40 years. He also

proved some documents in support of his treatment, Ext. 1 to 5. In cross examination, he claimed that he was a businessman and was a good player in the performing party. The learned Tribunal on a consideration of the materials on record, awarded an amount of Rs. 30,000/- towards pecuniary damages and medical expenses and further an amount of Rs. 8,000/- towards non-pecuniary loss, in all an amount of Rs. 38,000/-.

47. From the documents proved and exhibited by the claimant injured, it appears that he took treatment in the Silchar Medical College hospital for 8 days for his fracture in clavicle and injury over his chest and was further advised for follow up treatment at the time of discharge. The Medico legal case report shows that the injured has suffered deformity of right clavicle. The materials on record suggest that the claimant has suffered permanent injury on his right clavicle and because of his other injuries including dislocation of 7 teeth of the upper and lower jaws, had suffered disfiguration for which he is entitled to an enhanced amount of compensation under the head of non-pecuniary loss. The claimant injured has claimed to be a businessman and a good artist. In view of the above injuries sustained by him and the after effect thereof, he would be seriously handicapped in pursuing his usual activities in life. This aspect of the matter was not fully considered by the learned. Tribunal. Considering the facts and circumstances of the case, we are of the view that the amount of compensation under the head of non-pecuniary loss needs to be enhanced to Rs. 50,000/-.

48. MAC Appeal No. 86/2000 (MAC Case No. 103/97)

The injured claimant Chiranjib Roy in his deposition stated that as a result of the accident he fell down from the truck and an iron rod of the railing of the bridge pierced his abdomen and the internal organs of his intestine got exposed. He further stated that he also sustained injuries on his head and on other parts of the body. According to him, he was taken to Kalain hospital and therefrom the HPC hospital and finally to the Sudipta Nursing Home, Silchar where he remained as indoor patient from 12.11.1996 to 24.11.1996. He stated that he had to undergo one major operation and had remained unconscious for 7 days. He deposed that he had a monthly income of Rs. 3500/- to 4000/- and that his treatment was still

continuing. He proved and exhibited the Discharge certificate, cash memos, prescriptions etc. He also proved his income certificate. According to him, he had spent Rs.75,000/- towards his medical treatment. In course of the cross examination, the witness also exhibited the injuries sustained by him.

49. The learned Tribunal on a consideration of the materials on record awarded an amount of Rs. 31,000/- towards medical and other expenses and Rs. 10,000/- towards pain and sufferings, totalling Rs. 41,000/-.

50. The evidence on oath read with the documents proved, more particularly the certificate issue by the attending doctor of Sudipta Nursing Home establish that the claimant was operated for intestinal obstructions and had remained in the Nursing Home for about 12/13 days. From the cash memos proved by the claimant, the calculation of the learned Tribunal that he had spent an amount of Rs. 30,997.64p. does not call for any interference. We, however feel, having regard to the nature of the injuries sustained and the sufferings borne by the claimant in course of his treatment, that he is entitled to an enhanced amount under the head of non-pecuniary loss. In our view, it would meet the ends of justice if an amount of Rs. 10,000/- towards mental pain and suffering etc. is enhanced to Rs. 25,000/-. The principal amount of the award would therefore stand at Rs. 56,000/-.

51. While making the enhancements as above, we have adhered to the principles laid down in the various authorities including those referred to above. As already pointed out there is no inflexible rule or method for computing the amount of compensation to be awarded in such cases. The relevant consideration is that the same should be 'just', reasonable and adequate being mindful of all conceivable aspects of life which makes it a meaningful existence. The enhancements according to us are the demands of the situation refusal whereof would signify denial of 'just' compensation to the claimants.

52. In view of the foregoing discussion, the insurer appeals are allowed. The appeals filed by the claimants are also allowed to the extent indicated hereinabove. The impugned award stands modified accordingly. The enhanced amounts of compensation also would carry interest @ 12% per annum from the

date of the award. The respondent owner M/s Loobha Tea Co. Ltd. is directed to deposit the amount of compensation payable, within a period of two months herefrom. Needless to say that in doing so, the amount already paid shall stand deducted from the amount payable in terms of this judgment and order.

53. This disposes of the appeals as above. No costs.

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