Karnataka High Court New India Assurance Company ... vs The Member, Motor Accident Claims ... on 3 November, 2000 Equivalent citations: II (2001) ACC 512, 2002 ACJ 189, 2001 (2) KarLJ 629 Bench: H N Tilhari ORDER 1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner-Insurance Company has sought to challenge the award granted by the Motor Accident Claims Tribunal in M.V.C. No. 298 of 1994. The Tribunal decided M.V.C. Nos. 298, 299, 300, 337 and 352 of 1994 by one common judgment allowing the Claims and with reference to claim case No. 298 of 1994, it had awarded the total compensation of Rs. 4,97,500-00. 2. The accident in question had taken place on 21-11-1993 at about 3-10 p.m. Muralidhar, deceased, and Rukminiamma, now died, were travelling in a tempo bearing registration No. CNG-8836 from Udupi to Kapu. At that time, according to claimant's case, a bus bearing registration No. CNG-9385 came from opposite direction in a bigh speed and in a rash and negligent manner from the wrong side of the road and hit a portion of the tempo in which deceased Muralidhar and others were travelling. As a result of injuries, Muralidhar died and others suffered injuries. Rukminiamma also died. The claimants in the Claim Petition No. 298 of 1994 namely, father, mother and two sisters of the deceased filed the claim petition claiming compensation to the tune of Rs. 15,00,000-00. According to the case of the claimants, deceased Muralidhar was working as a Mechanical Engineer at B.E.M.L., Kolar District. The claimants also alleged that he was ready for promotion at that time but of his untimely death. According to the claimants, he had a bright future. The claimants alleged his salary to be Rs. 4,640-00 per month. The Tribunal, after considering the evidence, held that the accident in question had taken place on the date and time and place as alleged on account of rash and negligent driving of the bus bearing No. CNG-9385 and Muralidhar died on account of accident. It further found that the respondents failed to prove any contributory negligence and the sole cause of accident, according to the Tribunal, was rash and negligent driving of the bus bearing No. CNG-9385. After having recorded these findings, the Tribunal proceeded to assess the compensation. The Tribunal awarded the compensation under the following heads as under.- Rs. Medical Expenses 7,000-00 Loss of Dependency 4,65,300-00 Funeral and Obsequies 5,000-00 Conveyance Expenses 200-00 Mental agony and Pain 20,000-00

Total 4,97,500-00

In total, the Tribunal awarded compensation of Rs. 4,97,500-00 together with interest at the rate of 9% p.a.

3. Feeling aggrieved by this part of the order relating to M.V.C. No. 298 of 1994, the Insurance Company has filed this petition under Article 226 of the Constitution of India.

4. I have heard the learned Counsel for the petitioner.

5. The learned Counsel for the petitioner contended that this petition is maintainable from the order of the Tribunal. He further submitted that

under the Motor Vehicles Act no doubt right of appeal has been given to the Insurance Company, as held by the Hon'ble Supreme Court in the case of Narendra Kumar and Another v Yarenissa and Others and in the case of Chinnama George and Others v N.K. Raju and Another, but the Insurance Company's right to appeal has been restricted and limited to the defences available under Section 149(2) of the Motor Vehicles Act, 1988 and as Insurance Company is not entitled to challenge the quantum of compensation or cause of injury, the petitioner-Insurance Company has taken the recourse of filing this writ petition. The learned Counsel submitted that in view of the decision of the Supreme Court in L. Chandra Kumar v Union of India and Others and the Full Bench decision of the Gauhati High Court in the case of Smt. Milan Rani Saha v New India Assurance Company Limited, Agartala and Others, the present writ petition is maintainable at the instance of the Insurance Company. The learned Counsel further contended that the award of a sum of Rs. 4,65,300-00 by the Motor Accident Claims Tribunal towards the loss of dependency is excessive and is not in keeping pace with the principles and law of assessment of compensation for dependency and this amount is excessive. He submitted that in writ jurisdiction, he can challenge this amount though under the Motor Vehicles Act, such a plea may not be open under Section 149(2) of the Act.

6. I have applied my mind to these two contentions of the learned Counsel for the petitioner.

7. No doubt, petition under Article 226 may be maintainable in case of order passed by the Tribunals, but where the law provides an alternative remedy of appeal, this Court, as a matter of practice, refuses to interfere with the order. The petitioner has been conferred with the right of appeal under Section 173 of the Motor Vehicles Act. The right of appeal, its scope is to be and has been determined, no doubt, taking into view the scope of right of defences available or right of a party to plead his case. Under the Motor Vehicles Act, Section 149(2) restricts the right of defences that have been conferred and to the extent, it appeared necessary to the Legislature to confer it. It will be appropriate to quote sub-sections (1) and (2) of Section 149 of the Motor Vehicles Act, 1988 which reads as under.- "Section 149. Duty of insurers to satisfy judgments and awards against person insured in respect of third party risks.–(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy then, notwith- standing that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding

the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal, of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice, of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely.-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely.-
(b) a condition excluding the use of the vehicle-
(c) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
(d) for organised racing and speed testing, or
(e) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
(f) without sidecar being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
(iii) condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular". (emphasis supplied) It will further be appropriate to quote sub-section (7) of Section 149 which reads as under.-"(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given, shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be". (emphasis supplied)

8. A reading of these sub-sections of Section 149 and specifically sub-section (2) read with sub-section (7) clearly reveals that no insurer is entitled

to avoid his liability to any person entitled to the benefit of judgment or award referred to in sub-section (1) or sub-section (3) of Section 149, otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The right of defences is only limited to the defences specified in sub-section (2) of Section 149 of the Motor Vehicles Act. That to the extent to which and grounds on which the defences can be raised and decision is given by the Tribunal or the Court against the Insurance Company and with reference to the decisions as to those rights or defences the right of appeal has been held to be confined, restricted and controlled by these defences. In other words, right of appeal under Section 173 of the Motor Vehicles Act with reference to grounds on which and matters in relation to which award of the Tribunal can be challenged is controlled by the provisions of Section 149(2) and 149(7) of the Act. This has been so interpreted and has been so declared to be the law of the land by their Lordships of the Supreme Court in the case of Narendra Kumar, supra, in the context of Sections 96(2) and 110-C of the Motor Vehicles Act, 1939. This view with reference to Section 149(2), 149(7) read with Section 173 has been clearly expressed in the case of Chinnama George, supra. In paragraphs 7 and 8, in the case of Chin-nama George, supra, their Lordships observed and laid down as under.- "7. Sections 146, 147, 149 and 173 are in the scheme of the Act and when read together mean: (1) it is legally obligatory to insure the motor vehicle against third party risk. Driving an uninsured vehicle is an offence punishable with an imprisonment extending up to three months or the fine which may extend to Rs. 1,000/- or both; (2) policy of insurance must comply with the requirements as contained in Section 147 of the Act; (3) it is obligatory for the insurer to satisfy the judgments and awards against the person insured in respect of third party risks. These are sub-sections (1) and (7) of Section 149. Grounds on which insurer can avoid his liability are given in sub-section (2) of Section 149.

9. If none of the conditions as contained in sub-section (2) of Section 149(2) exists for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case insurer will be barred from filing any appeal against the award of the Claims Tribunal".

10. Looking to this position of law, the scheme of law and the policy behind the enactment of Sections 149(2), 149(7) and 173, as interpreted by their Lordships of the Supreme Court, it has to be held that the Legislature in its wisdom thought it fit to grant limited right of defence to insurer, as indicated by Section 149(2) and 149(7) of the Motor Vehi- cles Act, 1988 and right of defence being limited, the right to appeal has also been held to be limited and restricted, controlled by those defences. Otherwise it would have left to be an absurdity that those defences which were not open, would be tried to be availed at the appellate stage without there being any pleadings and especially in clear breach of specific bar contained in Section 149(7).

11. In this view of the matter, it has been held that right of appeal is circumscribed by defences available under Section 149(2) and 149(7) of the Act read with Section 173 of the Act.
12. Another question crops up, can this Court permit the expansion of right of defence having no regard to the provisions of Act i.e., enactment and law made by the Legislature? In my view, powers under Article 226 of the Constitution have no doubt to be exercised by the Court in case of error of law apparent on the face of record or error of jurisdiction if the order of the Trial Court or Tribunal suffers therefrom. But those powers cannot be allowed to be called upon to be exercised to render the provisions of statutory law such as Section 149(2) and 149(7) of the Motor Vehicles Act nugatory or redundant. In this Court from the order the Tribunal, a party just like the Insurance Company who has been specifically given limited right of defence cannot be permitted to succeed in its efforts to nullify or to render nugatory the provisions of law under Section 149(2) read with Sections 149(7) and 173 and especially the law declared under those provisions by the Supreme Court. The powers under Articles 226 and 227 cannot be permitted to be invoked and are not to be exercised to perpetuate the breach of law or breach of limits prescribed by law with reference to extent of defences being available to a person. When the law lays down a policy, powers under Article 226 cannot be exercised to enable a party to widen the scope of his defence, contrary to and in defiance of provisions of law and its scheme relating to the subject in question.
13. Therefore, in my opinion, firstly in the present case, the petitioner cannot be allowed to sidetrack the provisions of the Motor Vehicles Act. Therefore, by taking recourse to proceedings under Article 226, the petitioner cannot be allowed to take defences available to the insured on the ground on which the petitioner seeks to avail i.e., its right of appeal under Section 173 of Act is and has been held to be restricted and controlled by Section 149 (2) and (7) thereof. When I so opine and hold, I find support from the decision of their Lordships of the Supreme Court in the case of Mafatlal Industries Limited and Others v Union of India and Others, wherein their Lordships have been pleased to lay down, vide para 77 of the report, as under.- "So far as jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provi- sions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment." (emphasis supplied) Their Lordships, in para 108(x) of the above report, further observed as under.- "So far as the jurisdiction of the High Courts under Article 226 of the Constitution or of this Court under Article 32 is concerned, it remains unaffected by the provisions of the Act. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of

the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them". (emphasis supplied) Thus considered, the petitioner's petition is misconceived.

14. That apart from the above, even on merits in the present case, the deceased, at the time of accident, was a Mechanical Engineer and he was getting a monthly salary of Rs. 4,650-00. The learned Counsel contended that so far as multiplier 11 is concerned, there is no dispute. The remaining question is, what should have been the multiplicand to which multiplier had to be applied? It has been held by the Supreme Court that it is most unscientific to take the gross salary payable on the date of death as determining factor of multiplicand. Their Lordships of the Supreme Court have laid down that future prospects of promotion and increment in salary have also to be taken note of. It will be appropriate on my part at this juncture to refer to the following decisions of the Supreme Court: In the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v Mrs. Susamma Thomas and Others, their Lordships observed, "It is necessary to reiterate that the multiplier-method is logically sound and legally well-established". Dealing with the multiplier-method, their Lordships laid down in paragraph 13 as under.- "13. In the present case the deceased was 39 years of age. His income was Rs. 1,032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant, whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs. 2,000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents. This loss of de-

pendency should capitalize with the appropriate multiplier. In the present case we can take about Rs. 1,400/- per month or Rs. 17,000/- per year as the loss of dependency and if capitalized on a multiplier of 12, which is appropriate to the age of the deceased, the compensation would work out to (Rs. 17,000/- x 12 = 2,04,000/- rupees) to which is added the usual award for loss of consortium ana loss of the estate in the conventional sum of Rs. 15,000/-". (emphasis supplied) This case of Mrs. Susamma Thomas, supra, was followed in later decision namely in the case of Smt. Sarla Dixit and Another v Baliwant Yadav and Others, after quoting the observations from Mrs. Susamma Thomas's case, supra, their Lordships of the Supreme Court in Smt. Sarla Dixit's case, supra, observed as under.- "So far as the adoption of the proper multiplier is concerned, it was observed that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. Applying these principles to the facts of the case before this Court in the aforesaid case it was observed that the deceased in that case was of 39 years of age. His income was Rs. 1,032/- per month. He was more or less on a stable job and considering the prospects of advancement in future career the proper higher estimate of monthly income of Rs. 2,000/-as gross income to be taken as average gross future income of the deceased and deducting at least 1/3rd therefrom by way of personal living expenses, had he survived the loss of dependency, could be capitalised by adopting the multiplicand of Rs. 1,400/- per month or Rs. 17,000/- per year and that figure could be capitalised by adopting multiplier of 12 which was appropriate to the age of deceased being 39 and to that amount was added the conventional figure of Rs. 15,000/- by way of loss of consortium and loss of estate. Adopting the same scientific yardstick as laid down in the aforesaid judgment, the computation of compensation in the present case can almost be subjected to a well-settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs. 1,543/- per month. Rounding it up to figure of Rs. 1,500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs. 3,000 per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income

at the time of death, namely, Rs. 1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs. 3,000-00 per month and dividing that figure by two. Thus the average gross monthly income spread over his entire future career, had it been available, would work out to Rs. 4,500-00 divided by 2, i.e., Rs. 2,200-00. Rs. 2,200/- per month would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like payment of income-tax etc. That would roughly work out to Rs. 730/- per month but even taking a higher figure of Rs. 750/- per month and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs. 2,200/- per month balance of Rs. 1,450/-which can be rounded up to Rs. 1,500/- per month would have been the average amount available to the family of the deceased, i.e., his dependents, namely appellants herein. It is this figure which would be the datum figure per month which on annual basis would work out to Rs. 18,000/-. Rs. 18,000-00 therefore, would be the proper multiplicand which would be available, for capitalisation for compounding the future economic loss suffered by the appellants on account of untimely death of the bread winner. As the age of the deceased was 27 years and a few months, at the time of his death the proper multiplier in the light of the aforesaid decision of this Court in General Manager, Kerala State Road Transport Corporation, Trivandrum, supra, would be 15. Rs. 18,000/- multiplied by 15 will work out to Rs. 2,70,000/-. To this figure will have to be added the conventional figure of Rs. 15,000/-by way of loss of estate and consortium etc. That will lead to a total figure of Rs. 2,85,000/-. This is the amount which the appellants would be entitled to get by way of compensation from respondents 1 and 2 subject to our decision on Point No. 2".

15. When I apply these principles to the present case, then looking to the age of the deceased to be 29 years on the date of accident, he would have continued in service had he been alive at least up to the age of 58 years and he would have prospects of promotion and chances of promotion. If we tentatively double that figure and add to the present income, it will come to Rs. 4,650/ + Rs. 9,300/- = Rs. 13,950/-. If we divide Rs. 13,950/- by 2, because two aspects have been put together, the monthly gross income of the deceased in future life would have been Rs. 6,975/-and if we reduce it by 1/3rd namely deducting 1/3rd which the deceased would have spent on his own self, the monthly loss to the family would come to Rs. 4,650-00. If it is multiplied by 12 months, the yearly loss will come to Rs. 65,800-00. The multiplier which the Tribunal has applied and with respect to it there is no dispute. The loss of dependency will come to Rs. 6,13,800-00, in round figure it may not be more than Rs. 6,14,000-00. Thus examining the facts, I find that the award of Rs. 4,65,300/- for loss of dependency cannot be said to be illegal nor be excessive to call for any interference. The award

of Rs. 20,000/- for pain and suffering and mental shock suffered by the parents and sisters of the deceased cannot also be said to be excessive. There was no challenge to award of Rs. 7,000/- towards medical expenses nor to the sums awarded towards funeral, obsequies ceremony or towards conveyance sums. From the entire aspect of the matter, I find that this is not a case where it can be said that the Tribunal has committed any error of law or jurisdiction nor award can be said to be unjustified. Thus considered in my opinion, the present writ petition is misconceived. I should not be taken to laid down that no writ petition is maintainable from the Tribunal's order instead looking to the limited scope and the facts and circumstances of the case and law applicable in the matter of assessment, the Tribunal's award cannot be said to be suffering from error of law or error of jurisdiction. The writ petition, as such, is dismissed. I may mention that Sri Venkatesh, learned Counsel for the Insurance Company, no doubt, made his best efforts to persuade the Court. The efforts are appreciated, may not have been successful.