

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2895 OF 2015

JUDGMENT:

This appeal is preferred by the claimants-parents of the deceased by name Bhushan, aged about 20 years at the time of accident, aggrieved by the award dated 27.04.2012 passed by the learned Chairman of the Motor Accidents Claims Tribunal–cum-I Addl. District Judge, at Nizambad, (*for short, 'Tribunal'*), in O.P.No.876 of 2007 filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), against the two respondents owner and insurer of the crime vehicle Maruthi Van No. AP-9-F-5490 for the claim of Rs.6,00,000/- since awarded of Rs.1,51,500/- with interest at 7.5% p.a. fixing joint and several liability against both the respondents after contest.

2. The grounds of appeal are that the compensation awarded by the tribunal is utterly low besides fixing contributory negligence for nothing and the tribunal failed to consider the rash and negligent driving of the driver of the crime vehicle and in taking the earning of the deceased reasonably who is the only breadwinner of the family worked as footwear maker, business and agriculture and therefrom earned Rs.10,000/- per month and prays to award compensation as prayed for.

3. The appellants along with the unnumbered appeal filed a petition MACMA MP No.7639 of 2012 seeking to condone delay of 114 days in filing the appeal. For the reasons assigned in the affidavit as lack of funds, the delay is condoned subject to condition of not entitled to interest on enhanced amount till date and the registry is directed to number the appeal if otherwise in order and the matter is taken up for hearing.

4. Heard the learned counsel for the claimants and also the Insurer and the 1st respondent-owner of the crime vehicle against whom the appeal dismissed for default vide order dated 20.03.2015 is not a

necessary party vide expression of Apex Court in **M.Chakra Rao v. Y.Baburao**^[1] and perused the material on record.

5. So far as the contributory or composite negligence is concerned, the perusal of the award of the tribunal is very clear in its finding and for this Court even by re-appreciating the evidence, unable to come to a different conclusion but for to reduce from 25% of contributory negligence on the part of rider of the motor cycle to 20% as it also depends on the size and condition of the vehicle, manner of accident, size and condition of the road, portion at which the damage is caused to the vehicle and nature of injuries sustained by the deceased which are the factors in taking into consideration with cumulative effect. Now coming to the quantum of compensation, the tribunal taken the earnings of the deceased though claimant is cultivator and businessman at Rs.2,500/- per month. The accident was dated 23.09.2007. As per expression of Apex Court in **Latha Wadhwa vs. State of Bihar**^[2] even there is no proof of income and earnings, Rs.3,000/- p.m. to be taken for any non-earning member and even for housewife and in the present case from the date of said expression, the same with proportionate increase of Rs.3,600/- p.m. taken, if half deducted towards personal expenses of the deceased being unmarried and from the multiplier 14 that is applicable from the age of the mother of the deceased between 41 to 45, it comes to Rs.1,800/- x12x14=Rs.3,02,400/-+Rs.35,000/-(Rs.25,000/-towards funeral expenses and Rs.10,000/- towards loss of estate)= Rs.3,37,400/- is the just compensation to be awarded and 80% of the contributory negligence therefrom liable by the respondents is of Rs.2,69,920/- rounded to Rs.2,70,000/-.

6. In the result, the appeal is partly allowed by enhancing the compensation from Rs.1,51,500/- awarded by the tribunal to Rs.2,70,000/-(Rupees two lakhs seventy thousand only) confirming the rate of interest at 7.5%p.a. but the interest on the enhanced

compensation is only from today till realization. Respondents are directed to deposit said amount with interest within one month from today, failing which the claimants can execute and recover. On such deposit or execution and recovery, the claimants are permitted to withdraw the same. There is no order as to costs in the appeal.

Dr. B. SIVA SANKARA RAO, J

Date: 09-12-2015

Vvr

[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) (2001) 8 SCC 197=AIR 2001 (SC) 3218