

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
MACMA MP No.3491 of 2009 in MA CMA No. 2630 of
2015 & M.A.C.M.A.No. 2630 of 2015

COMMON ORDER :

The un-numbered appeal is filed by the claimants, aggrieved by the order and decree in O.P. No.883 of 2004 on the file of Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge, Nizamabad with a petition in MACMA MP No.3491 of 2009 to condone the delay of 877 days in filing the appeal and the same was allowed subject to payment of costs of Rs.2,000/- and the appellants paid as per the order dated 02.11.2015 and filed a memo to that effect.

2) The 2nd respondent is on record and the 1st respondent even remained exparte before the Tribunal, by referring to the expression in **Meka Chakra Rao v. Yelubandi Baburao**^[1] the fact of the 1st respondent is not a necessary party and registry is to number the appeal if otherwise in order.

3) The claimants filed the claim petition claiming compensation of Rs.6,00,000/- and the Tribunal awarded Rs.1,11,000/- with interest at 7.5% p.a. against the respondent Nos.1 and 2 for the accident occurred on 05/06.03.2004 after mid night while the deceased was traveling in the auto bearing No.AP 25 U 4756, the

opposite vehicle involved lorry involved and the accident occurred. The police filed the final report against the lorry driver of the 1st respondent lorry bearing No.ADT 4024 insured with the 2nd respondent. The Tribunal gave a finding to that effect. Said finding of the Tribunal not challenged by filing cross-objections by the insurance company to say because of two vehicles involved while proceeding in opposite direction of any contributory negligence.

4) Having regard to the above, though the finding is left open to adjudicate from that finding regarding the quantum, the deceased was claimed as Mason or agriculturist, there is no proof as rightly concluded by the Tribunal. The Tribunal therefrom taken as the earnings at Rs.2,000/- per month. However, as per the expression of the apex Court in **Latha Wadhwa vs. State of Bihar**^[2] in the absence of proof of income, Rs.3,000/- to be taken and even that is taken, coming to the deduction, the claimants are wife and two major sons, major sons are claimants being the legal heirs entitled to contribution from the though not dependants and as per **Sarla Verma v Delhi Transport Corporation**^[3] para Nos.3 to 33, the deduction is 1/3rd and if that is taken the income would be Rs.2,000/- per month i.e., Rs.24,000/- per annum. Even taken the multiplier '8' as per the Tribunal, it comes to

Rs.1,92,000/-. Apart from that loss of consortium the 1st claimant is entitled Rs.1,00,000/- as per **Rajesh v. Rajbir Singh**^[4], Rs.25,000/- towards funereal expenses and Rs.10,000/- towards loss of estate. In total it comes to Rs.3,27,000/-.

5) It is rightly contended by the insurer that without even cross-objections as per Order XLI Rule 22 C.P.C the finding can be attacked though for want of cross-objections, the quantum awarded by the Tribunal cannot be disputed but to reduce. Having regard to the above, it is the duty of the Court to consider any contributory negligence from the factual matrix of the case as the expression of the apex Court in **Ranjana Prakash V. Divisional Manager**^[5]. In fact as held by the Apex Court in **Jiju Kuruvila V. Kunjuamma Mohan**^[6] merely because two vehicles proceeding in opposite direction, there is no contributory negligence of both vehicles but for to appreciate from the evidence on record as it all depends on several factors to decide each case on its own facts. From the above P.W-2, driver of the auto besides P.W-3 another witness categorically deposed about the lorry was at fault even the auto was proceeding on left side of the road, there is nothing to fix any contributory negligence on the part of the auto who has not even a party. In fact it is left open to the insurer, if at all

to show any contributory negligence to make claim against the auto owner and driver as it is dependent one as per the expression of the apex Court in ***khenyei v. New India Assurance Company Limited***^[7].

6) In the result, the appeal is partly allowed enhancing the compensation from Rs.1,11,000/- to Rs.3,27,000/- with interest on the enhanced amount at 7.5% p.a. from today since the delay in filing the appeal is condoned. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

7) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19.11.2015

ksh

^[1] 2001(1)ALT 495 DB

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

^[3] 2009 ACJ 1298.

^[4] 2013 ACJ 1403=(4)ALT-35(SC).

^[5] 2011(8) SCALE 240

^[6] 2013 ACJ 2141

^[7] (2015)9 SCC 273