

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 8194 OF 2012

IN / AND

M.A.C.M.A. No.2860 of 2015

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JUDGMENT:

The appellants no other than mother and unmarried elder sister of deceased Vooyaka Anandarao, aged about 22 years as per Ex.A2—post mortem report, filed this appeal having been aggrieved by the Order/Award of the Motor Accidents Claims Tribunal-cum-II Additional District Court (FTC), Srikakulam, (for short, 'Tribunal') in M.V.O.P.No.370 of 2007 dated 30.07.2010 awarding compensation of Rs.1,87,000/- with interest at 7.5% per annum as against the claim of Rs.3,00,000/- for the death of Vooyaka Ananda Rao, filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'). Impugning the compensation awarded by the Tribunal is utterly low, the appeal is filed with the delay of 754 days and the reasons assigned by them are that they are helpless women and due to the 1st claimant suffered with jaundice and confined to bed for a considerably long time, there were nobody to take certified copy and consult the advocate to file appeal and it has resulted in the delay.

2) The 1st respondent—owner of the crime vehicle insured with 2nd respondent remained ex parte before the Tribunal and not necessary party to the appeal as per the decision of Division Bench of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao***^[1] and the same is recorded. The

2nd respondent—insurer even served failed to attend, hence taken as heard. The delay of 754 days in filing the appeal is condoned, subject to condition that the appellants are not entitled to interest till date on enhancement of compensation if any.

3) Heard learned counsel for appellants/ claimants to decide the appeal on merits at request, perused.

4) The brief averments of the claim are that on 19.12.2005 at about 9.00 pm while Vooyaka Anandarao was traveling in the lorry as a cleaner from Etcherla towards Rayagada and when he reached near Papa Cheruvu, Lolugu Village, the driver of the lorry bearing No.AP 35 T 1239 drove the lorry in a rash and negligent manner with high speed and overturned in the water, as a result of which, the said Anandarao received grievous head injury and died on the spot.

5) It is the very claim including from the evidence that the deceased was earning Rs.2,000/- per month besides daily batta of Rs.50/- per day. But the Tribunal has taken the income of the deceased at Rs.1,800/- per month. The accident occurred as stated supra on 19.12.2005. As per the Apex Court's expression in ***Kishan Gopal & another vs Lala***^[2], even in a claim under Section 163-A of M.V Act, in the absence of proof of earnings, doubled the earnings of a non-earning member i.e., an amount Rs.15,000/- to be read as Rs.30,000/- per annum as considered in ***Lata Wadhwa vs***

State of Bihar^[3], in the absence of proof of earnings the minimum to be taken at Rs.3,000/- per month. Even therefrom, by addition to the salary of Rs.2,000/- besides the clam of batta of Rs.50/- per day, thereby taken Rs.30,000/- per annum, if half deducted towards personal expenses, it comes to Rs.15,000/- per annum and from the age of the 1st claimant —wife of the deceased, who is dependent on the deceased the multiplier applicable is 14, then it comes to Rs.2,10,000/-. Apart from it, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate vide **Rajesh Vs Rajbir Singh**^[4], it comes to Rs.2,45,000/.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.1,87,000/- to Rs.2,45,000/-. The enhanced compensation of Rs.58,000/- shall carry interest at 7.5% per annum only from today till the date of realization. Both the respondents are directed to deposit the said amount with interest within two months 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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.27.11.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) 2001 (1) ALT 495 DB
[\[2\]](#) 2014 (1) SCC 244
[\[3\]](#) AIR 2001 SC 3218
[\[4\]](#) 2013 ACJ 1403