

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.2862 OF 2010

IN/AND

MACMA No.2583 OF 2015

ORDER:

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This appeal is filed challenging the order dated 03.07.2009 in M.V.O.P.No.219 of 2009 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge(F.T.C.), Narsapur.

2. It is the submission of the learned counsel for the appellant/insurance company that the above said O.P. was filed by mother of the deceased. The deceased was unmarried and aged about 20 to 25 years. The age of the claimant was shown as 40 years and the O.P. was filed against five respondents viz., driver and owner of lorry bearing No.AP 02 U 8619 and also insurer of the lorry, who is the appellant herein besides owner and insurer of lorry bearing No. AP 16 TV 1130. The Tribunal found that in the claim under Section 166 of the Motor Vehicles Act of Rs.5 lakhs of accidental death dated 09.09.2006, the deceased died while discharging duties as driver of the lorry of 4th respondent bearing No. AP 16 TV 1130, and the finding by the Tribunal that the accident was due to rash and negligent driving of the 1st respondent of the vehicle of 2nd respondent to the claim petition.
3. It is one of the contentions in the grounds of appeal that the deceased parked the vehicle and the 1st respondent therein while driving the vehicle of the 2nd respondent insured with the 3rd respondent, dashed the same is not in dispute.
4. Admittedly, the accident was occurred at 4.00 a.m. No doubt, there is no evidence to show that there were no blinking lights of the parking vehicle of the deceased. The earnings of the deceased as driver of the lorry as on

the date of accident i.e., 09.09.2006 claimed at Rs.5,000/- p.m. and the Tribunal taken the same at Rs.3,000/- p.m. while accepting the factum of the deceased was driver of the lorry at the time of accident proved from Ex.A1, FIR and Ex.A4, charge sheet. No doubt, the Tribunal has deducted 1/3rd towards personal expenses instead of half as the sole claimant is the mother of the deceased and awarded Rs.4,44,000/- with rate of interest at 7.5% against respondents 1 to 3. Impugning the same, the 3rd respondent/insurer filed this appeal with a delay of 233 days.

5. Among five respondents, respondents 2 and 3 were taken notices as unserved and for no fresh notices sent, dismissed for default on 16.02.2015. It is the submission there from that, though dismissed for default in the appeal, as they remained exparte before the Tribunal, as can be seen from the award, no way fatal to the maintainability of the appeal as per the expression in **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**. Hence, the delay is condoned from hearing of contesting claimant representing through advocate for other respondents not necessary parties but proforma parties of the lorry of the deceased driver, owner and insurer.
6. It is at the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise an order; taken up the appeal for final hearing. Heard and perused the material on record.
7. So far as contention of contributory negligence concerned, the F.I.R and charge sheet are against respondent No.1, who is driver of the vehicle of respondent No.2 insured with respondent No.3. There is nothing to show any contribution by the deceased for the crime lorry run over. Even taken of what the Tribunal assessed the earnings at Rs.3,000/- p.m., though claimed Rs.5,000/- p.m. the prospective earnings from his age 50% increase to be taken and out of it the earnings of the deceased can be estimated at Rs.4500/- p.m. and if half of the same is deducted, it comes to Rs.2250/- p.m and the multiplier '15' applicable from the age of the

claimant as 40 years and by adopting '15' multiplier, the compensation comes to Rs.4,05,000/- (Rs.2250/- x 12 x 15) and loss of estate and love and affection if awarded further, the same comes, more than what the Tribunal awarded at Rs.4,44,000/-. Hence, there is nothing to interfere with the award of the Tribunal.

8. Accordingly, the appeal is dismissed. No order as to costs.
9. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-11-2015

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