

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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MACMA No.2897 OF 2015
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JUDGMENT:

The claimants filed claim petition in M.V. O.P. No.54 of 2005 on the file of District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Chittoor, (for short, 'the Tribunal') for Rs.3,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), against the owner and insurer of the lorry bearing No.AP-04-U-5483, for the injuries sustained by the first claimant in the accident that occurred on 29.12.2003. The Tribunal concluded that the accident was the result of rash and negligent driving of the lorry of R-1 insured with R.2.

02. Before the tribunal, the first respondent/ owner of the lorry remained *ex parte*, and R.2 alone contested the claim petition. Even R.1 impleaded in the appeal, dismissed for default against R.1 vide court order dated 19.02.2015 for not taking fresh notice including in delay condonation petition in unnumbered appeal, that no way fatal vide expression of the Apex Court reported in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**^[1]. The same is recorded.

03. Perused the material on record.

04. The factual matrix required to say for deciding the appeal is that on 29.12.2003 at about 3.45 P.M. while the first claimant had proceeding on his bike, met with an accident due to rash and negligent driving of the lorry of the first respondent referred supra, insured with the second respondent. The compensation claimed under Section 166 of the Act is Rs.3,00,000/-. The injuries sustained are undisputedly as per Ex.A.3 – wound certificate and treated as inpatient from 02.01.2004 and to 29.01.2004, deformity of left knee and fracture of femur. The doctor who treated the petitioner not even examined, but for the wound certificate.

Ex.A.4 is the bunch of Medical Bills. Ex.A.5 is the Death Certificate dated 07.09.2006 issued for the death of first claimant due to the injuries sustained in the accident that occurred on 29.12.2003, and died on 24.08.2006 on the same day of admission in CMC hospital, Vellore.

05. The death was more than two and half years after the accident. There was no post mortem examination in the CMC hospital. In the death certificate, there is nothing to show the cause of death. Initially as per the claim petition averments and Ex.A.3-wound certificate having been treated as inpatient till 29.01.2004 and later preferred the claim petition with the averments and not shown any continuous treatment even in the claim petition averments. It is more than two and half years after the discharge from the hospital and the petitioner sustained injury i.e. deformity of left knee and fracture of femur, as the case may be, is remotely caused the death. The tribunal rightly concluded the cause of death, no doubt, due to injury supra that having proved and thereby taking into consideration of claim of the injured. No doubt there is maxim *actio personalis moritur cum persona*, and this Court also covering the same held in more than one decision saying once claim is filed by the injured, cause of action survives to continue and, in particular, for the loss of estate incurred after the death but for the pain and suffering due to injuries, for the legal representatives to receive the claim as already made, though compensation is different. From that, what the tribunal awarded is Rs.50,000/- in all to the claimants 2 to 4, who are no other than the wife and two sons. During pending claim petition, while contesting by claimants 2 to 4 stepping into the shoes of first claimant died for the injuries suffered supra, 4th claimant also died and his legal representatives 5 to 7 were brought on record.

06. Now the question that arise for consideration is, whether Rs.50,000/- awarded by the tribunal with interest @ 7.5.% is just or not?

07. Learned counsel for the petitioner contended that the tribunal

awarded Rs.20,000/- towards medical expenses, treatment, transport charges etc., on all counts, and Rs.30,000/- for pain and suffering sustained by the first claimant is utterly low and the tribunal would have consider the death of the first claimant is for the injuries as discussed supra.

08. There is no proof that the death of the first claimant is for the injuries and what the tribunal held is correct as the death not connected to the injuries. Exs.A.4 to 7 - bunch of medical bills for the period from 13.08.2006 to 19.08.2006, whereas under Ex.A.5, the petitioner was admitted on 24.08.2006 and breathed lost on the same day. The tribunal rightly rejected the so called bills, not connected to the treatment dated 24.08.2006 and there is no prescription or any basis for the bills and undisputedly a perusal of some bills already substituted even claimed repeatedly negating the same and in awarding lumpsum for the medical bills, treatment, transport charges, extra nourishment etc., in all Rs.20,000/-.

09. Coming to the compensation in respect of pain and suffering, for the fracture of femur from the accident dated 29.12.2003 Rs.25,000/-, to award and for the deformity to left knee Rs.10,000/-, total Rs.35,000/- is just and taking into consideration of the treatment as inpatient for 27 days from 02.01.2004 to 29.01.2004, the petitioner entitled for an amount of Rs.6,000/- towards loss of earnings, Rs.10,000/- towards medical expenses and treatment, Rs.5,000/- towards transportation charges and attendant charges, Rs.4,000/- towards extra nourishment, in all it comes to Rs.60,000/-.

10. Accordingly, the petition is partly allowed enhancing from 50,000/- to Rs.60,000/- (Rupees sixty thousand only) and in other respects, the award of the tribunal holds good, however not entitled to interest on the enhanced amount, but from today. No costs.

11. Miscellaneous petitions if any pending in this appeal shall stand closed.

Dr.B.SIVA SANKARA RAO, J

Dt.11.12.2015

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[\[1\]](#) 2002 ACJ 828