

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.6039 of 2009

IN/AND

M.A.C.M.A.No.2903 of 2015

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ORDER:

The claimants, six in number are no other than wife, mother, two major sons and two unmarried major daughters of the deceased by name Zaheeruddin, Junior Lineman in A.P.Transco with a salary of Rs.6,539/- p.m. by the time of his death under Ex.A6 proved from PW.2 evidence aged about 53 years to retire within five years, who maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act') for Rs.8 lakhs against the owner and insurer of the auto bearing No.AP 11 AG T/R 8074 of the motor accident dated 29.09.2006 which speaks to the manner of accident due to rash and negligent driving of the driver of the auto where the deceased was travelling which dashed against RTC bus for no fault of the bus driver from which the compensation and the tribunal awarded compensation of Rs.2,38,000/- with interest at 7.5% p.a. vide award dated 25.11.2008 in O.P.No.432 of 2007, by impugning the same maintained the appeal with contentions in the grounds of appeal that the tribunal gravely erred in taking the net salary of Rs.4,950/- instead of gross salary of Rs.6,539/- and adopted a

wrong multiplier '5.63' instead of '11' and also went wrong in giving 1/3rd deduction instead of more than 1/4th and interest awarded at 7.5% is low to enhance to 9%, hence to allow the appeal, as prayed for.

2. The un-numbered appeal is filed with a delay of 183 days and the reason assigned in the application for condonation of delay is lack of funds in filing the appeal.

3. Whereas, it is the contention of the learned counsel for the 2nd respondent-insurer that even 1st respondent, owner of the auto remained exparte before the tribunal even impleaded and dismissed for default on 19.12.2011, no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1] and the same is recorded.

4. Heard and perused the material on record. The delay is condoned, subject to condition of not entitled to interest on the enhanced amount till date but from today.

5. The appeal is taken up for hearing at request of both the parties.

6. The manner of accident is not in dispute. The deceased aged 53 years and was working as Junior Lineman in A.P.Transco with a salary of Rs.6,539/- p.m.

are also not in dispute and among the six claimants but for two major sons, the remaining four are dependants since the two major daughters are not married is also not in dispute.

7. Having regard to the above, though as per **Rajesh Vs. Ranbir Singh**^[2] following **Sarla Verma v. Delhi Transport Corporation**^[3], where the dependants are more than three, $\frac{1}{4}^{\text{th}}$ deduction is permissible, thereby instead of $\frac{1}{3}^{\text{rd}}$ deduction towards personal expenses of the deceased is $\frac{1}{4}^{\text{th}}$ herein and the prospective earnings though required to be taken into consideration from the expression in **Rajesh**(supra), here the remaining service left by the deceased is below five years and even any prospective increase of 15% to be taken, the income tax deduction and compulsory deductions out of the gross salary required to be taken. Hence, by compensating with the same even taken Rs.6500/- p.m., if $\frac{1}{4}^{\text{th}}$ deducted towards personal expenses, it comes to Rs.4,875/-p.m. x 12 x 11 (multiplier)= Rs.6,43,500/-. Apart from the same, the claimants are entitled to Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.1,00,000/- towards loss of consortium vide **Rajesh**(supra). Thus, in total it comes to Rs.7,78,500/-.

8. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.2,38,000/- to Rs.7,78,500/- but however the interest at 7.5% p.a. is awarded on the enhanced amount from today i.e., 31.12.2015 only. There is no order as to costs.

9. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:31-12-2015

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

[\[2\]](#) 2013 ACJ 1403

[\[3\]](#) 2009 ACJ 1298