

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.2902 OF 2015

JUDGMENT:

The Insurer-2nd respondent out of two respondents including owner of Tata Indica car (crime vehicle) bearing No.AP-02-AA-8782 of O.P.No.219 of 2010 filed by the claimants 1 to 6 i.e. wife and other family members of the deceased Ediga Ramachandra, aged 45 years as per Ex.A.3 inquest and Ex.A.4 post mortem report, under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the claim of Rs.10,30,000/- (Rupees ten lakhs thirty thousand only) on the file of the Chairman, Motor Accidents Claims Tribunal –cum-I Additional District Judge, Anantapur, (for short, 'the Tribunal'), aggrieved by the award dated 27.01.2012 for granting entire claim with interest at 7.5% p.a. by fixing liability against both the respondents, holding that the accident was the result of the rash and negligent driving of the driver of the jeep of the 1st respondent insured with the 2nd respondent(appellant herein), preferred this appeal with the contentions in the grounds of appeal that the compensation awarded by the tribunal is exorbitant, excessive and untenable, that the tribunal, by relying on the self-serving statement, in taking income of the deceased at Rs.8,000/- p.m. that the tribunal failed to observe that the petitioners 2 and 3 are major sons not dependants but treated them as dependants deducted only 1/4th towards personal expenses of the deceased, that the tribunal failed to appreciate the Ex.A.4 M.V.I.Report wherein categorically stated that the driver of the crime jeep not possessed driving licence, hence to set aside the award of the tribunal.

2. The appellant along with the unnumbered appeal filed a petition vide MACMAMP No.6669 of 2012 seeking to condone the delay of 158 days in preferring the above appeal stating that due to administrative delay, they could not be able to prefer in time. The learned counsel for the claimants opposed the delay condonation

petition stating that the appellant failed to explain the abnormal delay in preferring appeal, hence the delay cannot be condoned to give life to the litigation to interfere with the accrued rights of the claimants. In the interest of justice, the petition is allowed by condoning the delay and the registry is directed to number the unnumbered appeal if it is otherwise in order and the appeal is taken up for hearing.

3. Heard the learned counsel for the appellant-Insurer who reiterated the contentions in the grounds of appeal and also the learned counsel for the respondents 1 to 6-claimants and the 7th respondent who is no other than the owner of the crime vehicle remained *exparte* before the tribunal even impleaded dismissed against him for default vide court order dated 26.03.2015, is not a necessary party as per the expression of in **M.Chakra Rao v. Y.Baburao**^[1], taken as heard and perused the material on record.

4. The tribunal estimated the earnings of the deceased at Rs.8,000/- p.m. from the evidence on record that the claimant was an agriculturist owning lands shown from Ex.A.6 adangal extract for fasili 1419 and owning Combine Harvester, the agricultural machinery for which there a policy obtained covered by Ex.A.9. The tribunal ignored the factum that what the deceased could have from that land and the harvesting machine is supervisory cultivation and what was lost as having been succeeded all these by the legal heirs is the supervision with any hard labour further of the deceased. So far as her labour concerned, even in the absence of proof of earnings as held in **Latha Wadhwa vs. State of Bihar**^[2] even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution, even minimum Rs.3,000/- is taken, even as domestic contribution of housewife so far as the further supervision is concerned, the supervision includes the hard labour also for the agricultural

operations, it is just to consider including from the expression Latha wadhwa supra of 2001 to the date of accident i.e. 31.12.09 nearly 9 years after the said expression, Rs.4,500/- p.m. is just to take and therefrom there is no basis for the tribunal to take Rs.8,000/- p.m. thereby it requires to be reduced to Rs.4,500/- p.m. Further, the claimants are 6 in number as per **Sarla Verma v. Delhi Transport Corporation** [3] which is proved in **Rajesh v. Rajbir Singh** [4] if the dependents are three or more than 3, the personal expenses upto 5 is $\frac{1}{4}^{\text{th}}$ and above 6 it is $\frac{1}{5}^{\text{th}}$. The word dependents is used in Sarla verma supra in para-32 and not for non-dependants. Here, there is only unmarried daughter even major besides wife and mother and the other three sons are not the dependents being majors. When such is the case though the tribunal taken $\frac{1}{3}^{\text{rd}}$ towards personal expenses, it requires to take $\frac{1}{4}^{\text{th}}$ from those analogies, if that is taken Rs. 4,500/- $\times \frac{3}{4} \times 12 \times 14$ (multiplier) it comes to Rs.5,67,000/- apart from Rs.1,00,000/- towards consortium to the 1st claimant, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, even taken Rs.18,000/- towards marriage expenses, love and care of the unmarried daughter (4th claimant), in all comes to Rs.7,20,000/- which is just compensation the claimants are entitled with interest at 7.5% p.a. instead of claim of Rs.10,30,000/-.

5. In the result, the appeal is partly allowed by reducing the compensation granted by the tribunal from Rs.10,30,000/- to Rs.7,20,000/- with interest at 7.5% p.a. from the date of petition till realization. The award of the tribunal in other respects holds good. On deposit or execution and recovery, the claimants are permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 15.12.2015

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- [\[1\]](#) 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).