

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**MACMA MP No.871 of 2012 IN/AND**

**MACMA(S.R.) No.2733 OF 2015**

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**ORDER:**

The claimants, who are no other than parents of the deceased boy by name, K.Venkata Siva Reddy, aged about 20 years as per Post Mortem Report as on the date of accident i.e., 06.04.2008, while undergoing treatment and shifted to Government Hospital, where he breathed lost on next day, the claim filed for Rs.5 lakhs under Section 166 of the Motor Vehicles Act against owner and insurer of the lorry bearing No.TN 09 AH 4682 and the trial Court after contest by the 2<sup>nd</sup> respondent-insurer, from 1<sup>st</sup> respondent-owner remained exparte before the tribunal in O.P.No.635 of 2008 by award dated 23.08.2011 granted compensation of Rs.1,65,000/- with interest at 6.5% p.a. and impugned the said quantum as utterly low and by non-consideration under various heads and also the interest as untenable under law filed supra with 55 days delay to be condoned.

**2.** Heard the learned counsel for the claimants and the 3<sup>rd</sup> respondent-insurer and perused the material on record.

**3.** The appeal and the petition are maintainable against owner and insurer and the owner remained exparte before the tribunal even arrayed in the appeal as 1<sup>st</sup> respondent dismissed for default on 30.03.2015 for non-taking fresh notice despite ordered and the learned counsel placed reliance on the expression of **Meka Chakra Rao vs Yelubandi**

**Babu Rao @ Reddemma**<sup>[1]</sup> saying once remained exparte before the tribunal not a necessary party to the appeal, thereby recorded the submission of the impleading and dismissal no way fatal to the appeal.

4. The reason assigned for the delay is due to lack of funds in cause filing in time same is condoned, subject to condition of not entitled to interest on the enhanced amount till date.

5. At request of learned counsel for the insurer and the claimants, the appeal is taken up for hearing.

6. The trial Court rightly taken the multiplier '13' from the age of the mother between 48 to 50 years among the two claimants/parents and taken the earnings at Rs.1,000/- p.m. though claimed Rs.5,000/- p.m. In fact there is no proof regarding the deceased is working as machine operator in the so called oil mill of PW.3 but for filing the so called salary certificate-EX.A6, as if working for salary of Rs.200/- per day on the days worked. There is no other evidence to consider the same, thereby, though tribunal referred the same and not specifically disbelieved the conclusion of taken on them itself suffice to say the tribunal rightly disbelieved said claim of Rs.5,000/- p.m. No doubt, the accident was occurred in April, 2008. As per **Lata Wadhwa V State of Bihar**<sup>[2]</sup>, in the absence of proof of earnings, minimum Rs.3,000/- p.m. to be taken and the expression is nearly eight years before the accident on hand, even taken Rs.3800/- p.m. as earnings of the deceased, it comes to Rs.5,92,800/-(Rs.3,800x12x13) and half of the same comes to Rs.2,96,400/-. Apart from it, the petitioners are

entitled to Rs.10,000/- towards loss of estate, Rs.10,000/- towards love and affection as only child to the parents and Rs.25,000/- towards funeral expenses, Rs.8,000/- towards medical and transport charges before death and after accident. Thus, in total, it comes to Rs.3,49,400/-, which is rounded to Rs.3,50,000/-.

7. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.1,65,000/- to Rs.3,50,000/-. However, with interest at 7.5% p.a. on the original amount till date and on the enhanced compensation from today till realization. There is no order as to costs.

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

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**Dr. B. SIVA SANKARA RAO, J**

**Date:08-12-2015**  
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[\[1\]](#) (2001 (1) ALT 495)

[\[2\]](#) AIR 2001 (SC) 3218