

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
M.A.C.M.A.M.P. No.5264 of 2012 in M.A.C.M.A.No. 2697
of 2015 & M.A.C.M.A.No. 2697 of 2015

COMMON ORDER :

The appellant herein is the claimant filed the present appeal against the award dated 02.08.2011 in M.V.O.P.No.5 of 2010 on the file of Chairman-cum-I Additional District Judge, Kadapa.

2) The appellant/claimant who is a major and employee, who is son of the deceased woman by name G.Venkata Subbamma, aged about 63 years. He is the sole legal heir maintained the claim under Section 163-A of the Motor Vehicles Act for Rs.2,00,000/- for the death of his mother on 17.05.2009 in a motor accident while she undergoing treatment pursuant to the injuries sustained in the accident dated 10.05.2009 while crossing the road at Railway Kodur of Kadapa District, allegedly due to the rash and negligent driving of the driver of the vehicle bearing No.AP 03 W 6266 of the 1st respondent insured with the 2nd respondent. The 1st remained exparte before the Tribunal and the 2nd respondent insurer contested the matter. The Tribunal by adopting the multiplier (6) method under Section 163-A of the Motor Vehicles Act and after deduction of 1/3rd towards personal expenses, arrived compensation of Rs.1,44,000/- and so far as medical expenses arrived Rs.1,17,613/- which includes the

ambulance bill of Rs.22,250/- allegedly incurred. Having arrived a total sum of Rs.2,61,613/- confined to the claim with interest at 6% p.a. to Rs.2,00,000/-.

3) It is now impugning the same, the present appeal is filed showing the two respondents with a petition to condone the delay of 252 days. So far as against the 1st respondent owner of the vehicle dismissed for default, it is the submission that the 1st respondent remained exparte before the Tribunal also, no way necessary party to the appeal vide **Meka Chakra Rao v. Yelubandi Baburao**^[1]. Same is recorded.

4) Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent-insurer. The reasons assigned in the application for condonation of the delay is that he could not approach the Court because prolonged illness of his wife and because of he attending her, the delay caused. Heard and the delay is condoned by directing the registry to number the appeal, otherwise if in order. At request of both sides, the appeal is taken up for hearing and heard.

5) So far as the claim for medical expenses concerned i.e., Rs.1,17,613/-, as per the claim made with reference to some bills. So far as incurring of the ambulance charges, Ex.A-15 for Rs.22,250/- no way to sustain since she was admitted at local hospital at

Railway Kodur, there from shifted to Padma Super Speciality Hospital at Kurnool and there she was treated and during the treatment she allegedly breathed last. That itself shows the so called ambulance bills are untrue and untenable. Even coming to the incurring several amounts allegedly as medical bills, the super specialty hospital expenses for showing entire amount including for medicines of Rs.51,300/-, thereby several other claims allegedly incurred for medical bills including for Rs.24,185/- no way tenable. The Tribunal did not consider the same. Even otherwise, so far as dependency arrived by the Tribunal of Rs.1,44,000/- concerned the claim is admittedly but for a class-I and sole heir not a dependent. The Tribunal ought to have been taken into consideration only the contribution from the deceased to the claimant and nothing more. Even $\frac{1}{3}^{\text{rd}}$ is the personal expenses deduction as per Schedule II with reference to Section 163-A of the Motor Vehicles Act out of the amount arrived, the contribution has to be arrived afresh which cannot exceed more than half of the said amount of the deceased to be arrived. When such is the case, what the Tribunal awarded of Rs.2,00,000/- is more than just and reasonable, if not to say exorbitant, but for no cross-objections to reduce.

6) Having regard to the above, there are no grounds in the appeal to enhance more than what the Tribunal

awarded of Rs.2,00,000/-. However, so far as rate of interest concerned, what the Tribunal awarded of 6% p.a. requires to be enhanced to 7.5% p.a. as per **Rajesh v. Rajbir Singh**^[1], ^[2] from the date of appeal.

7) In the result, the petition to condone the delay of 252 days is allowed and the (un-numbered) appeal is partly allowed by enhancing the rate of interest from 6% p.a. to 7.5% p.a. from the date of appeal till the date of realization and the rest of the terms of the award of the Tribunal including amount of compensation holds good.

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

Dr. B. SIVA SANKARA RAO, J

03.12.2015
ksh

^[1] 2001(1)ALT 495 DB

^[2] 2013 ACJ 1403=(4)ALT-35(SC).