

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1987 OF 2010

IN/AND

MACMA No.2569 OF 2015

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ORDER:

This appeal is filed challenging the order dated 10.07.2008 in M.V.O.P.No.785 of 2005 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari District at Eluru.

2. It is the submission of the learned counsel for the appellant that the 2nd respondent-owner of the vehicle remained exparte before the Tribunal, as can be seen from the award under challenge, no way necessary party to the appeal and even impleaded and dismissed for non-payment of batta, it no way comes to maintainability of the appeal, as per the expression of **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma** and perused the material on record. Though 1st respondent served failed to attend and the 3rd respondent-insurance company is representing through counsel.
3. Heard and perused the material on record. The delay of 238 days in filing the appeal is condoned.
4. The appeal is taken up for hearing since contesting insurance company and the claimants representing through advocates on record requested to take up the appeal while directing the Registry to number the same if otherwise in order.
5. The appeal claim is impugning the award on quantum of

compensation awarded of Rs.3,95,500/- with interest at 7.5% p.a. in O.P.No.785 of 2005, which was filed against the driver, owner and insurer of the auto bearing No.AP 37W 2113 with a claim of Rs.7,00,000/- under Section 163-A and 166 of the Motor Vehicles Act. The claimant filed Ex.A13, certificate of salary showing he was working in Sri Sai Balaji Rice Mill, Dendaluru, West Godavari District as rice mill driver and clerk, on salary of Rs.3,000/- p.m. besides batta to the days attended at Rs.50/- per day. The Tribunal, however, observed that he did not even chose to examine rice mill owner with regard to claim in taking the earnings at Rs.2,000/- p.m. In fact, there is nothing to disprove that certificate. So far as the earnings at Rs.3,000/- p.m. otherwise could have take as in **Lata Wadhwa V State of Bihar**, it was held that minimum earnings to be taken at Rs.3,000/- p.m. in the absence of proof of earnings. As the accident was on 06.12.2004, about three years after the expression, what is claimed of Rs.3,000/- p.m. no way requires to reduce. No doubt, he is employee that is proved and oath against oath from the insurer and there is prospective earnings to increase from his age 35 years, 30% as per **Rajesh and others Vs. Ranbir Singh and others**, it comes to Rs.3,900/- p.m. with prospective increase. Here, the fact remains that, though Ex.A10, disability certificate issued by PW.3, it is not the disability certificate of Medical Board but of the Doctor and to say that it is 55% as permanent disability it is not even stated as to is confined to the limb or total body or functional disability or impact on future earnings for the rest of the life. He did not adduce any evidence to show that he was removed from service or he is unable to attend the duties as rice mill driver-cum-clerk, after the accident, while continuing in service. As per the Apex Court's expression

in **Raj Kumar v. Ajay Kumar** in the absence of showing loss of earnings from functional disability, after the accident to the rest of life, the lumpsum to be awarded but not by multiplier method. Having regard to the above, what the Tribunal awarded in all of Rs.3,95,500/- no way requires any further enhancement.

6. Having regard to the above, on merits there is nothing to interfere with the quantum awarded by the Tribunal.
7. Accordingly, appeal is dismissed. No order as to costs.
8. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-11-2015

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