

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.4534 OF 2009

IN/AND

MACMA No.2557 OF 2015

ORDER:

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This appeal is filed challenging the order dated 03.03.2008 in O.P.No.1097 of 2005 on the file of Motor Accidents Claims Tribunal-cum-District Judge, Vizianagaram.

2. MACMA.M.P.No.4534 of 2009 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (409) days in filing the appeal.
3. Claimants 1 to 3 are no other than wife and two minor children of the deceased, by name, Srinivasa Rao, advocate by avocation in Vizianagaram, died on 31.05.2005 at K.M.Stone No.550 at Mudidam Village, due to rash and negligent driving of the 1st respondent/driver of lorry bearing No.AP 31 V 225 insured with the 3rd respondent; that the claimants claimed Rs.15 lakhs as compensation and the Tribunal awarded Rs.6,34,000/- with interest at 6% p.a. Impugning the same, the claimants preferred this appeal with a delay of 409 days.
4. Respondents 1 and 2, who are driver and owner of lorry remained exparte before the Tribunal as can be seen from the award and among three respondents supra besides the parents of the deceased impleaded as respondents 4 and 5 in the claim petition vis-à-vis in the appeal, and the delay condonation application. Respondents 4 and 5 are endorsed as not necessary parties. Respondents 1 and 3 are driver and insurer of lorry. The appeal against the 2nd respondent, owner of lorry dismissed for default and later restored. However, there is no proof of service for 3rd respondent. It is submitted that respondents 1 and 2 are not necessary parties. Even 1st respondent remained exparte and 3rd respondent not

served as they remained exparte before the Tribunal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, it no way comes to maintainability of the appeal and the same is recorded.

5. The reason assigned for condonation of delay is due to paucity of funds and having made efforts they could secure and engaging the advocate and other reason that one of the daughters i.e., 2nd petitioner suffered with jaundice and they attended the treatment of the girl and also for the financial problems could not file the appeal in time. In fact, a perusal of grounds of main appeal shows there is some tenable contest to raise for the claim of compensation is not just compensation. Having regard to the above, by considering the same the delay is condoned.
6. At the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order; taken up the appeal for final hearing. Heard and perused the material on record.
7. The main contention is on the quantum of compensation. The deceased was shown about 40 years. The claim is under Section 166 of the Motor Vehicles Act as referred supra, the multiplier applicable for the persons aged 40 years is '15' as per **Sarla Verma v. Delhi Transport Corporation**. The avocation of the deceased as advocate is not in dispute even in the counter, much less evidence as can be seen from the award of the tribunal. The tribunal taken the earnings of the deceased as advocate though claimed as more than Rs.10,000/- p.m. only Rs.5,100/- p.m. It is the submission of the learned counsel for the claimant that even a self-employed, like an advocate also from the Apex Court's expression in **Rajesh and others Vs. Ranbir Singh and others** entitled to prospective increase. No doubt, as pointed out by the learned counsel for the respondent/insurer, there is no any income tax returns in which referring the income of the deceased as advocate and nothing is filed to say attending any civil works much less with permission of Bar Council besides regular work. Having regard to the above, even taken earnings at

Rs.4,000/- p.m. and with prospective increase of 50% upto 40 years as per **Sarla Verma** (supra) and **Rajesh** (Supra), it comes to Rs.6000/- p.m. and if 1/3rd is deducted towards personal expenses, it comes to Rs.7,20,000/- (Rs.4,000/-x12x15). Apart from the same, the appellants are entitled to Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to the minor children (as per **Rajesh** (supra)). Thus, in total, it comes to Rs.8,75,000/-.

8. Accordingly, the appeal is partly allowed by enhancing compensation from Rs.6,34,000/- to Rs.8,75,000/- and also enhancing the rate of interest from 6% to 7.5% from the date of claim petition till realization but for the period of date of appeal till today i.e., 13.11.2015, for the laches of the appellants for delay in filing the appeal.

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

Dr. B. SIVA SANKARA RAO, J

Date:07-11-2015

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