

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-

M.A.C.M.A.M.P.No.2729 of 2011 IN/AND

M.A.C.M.A.No.287 of 2016

-

ORDER:

MACMA MP No.2729 of 2011 is filed to condone the delay of 103 days in filing the appeal against the order and decree dated 06.12.2010 in M.V.O.P.No.1419 of 2008 on the file of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad.

2. Heard the learned counsel for the appellant/insurer, among two respondents of the claim petition including owner, who remained exparte before the tribunal and even impleaded in the appeal for non-taking of steps to serve fresh notice dismissed for default, no way fatal to the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, in the claim petition maintained under Section 166 of the Motor Vehicles Act for Rs.15,00,000/- by three claimants, no other than father, younger sister and younger brother of the deceased aged about 25 years as per claim petition of the motor accident dated 18.02.2008 and student of first year engineering and the tribunal awarded Rs.8,74,000/- with interest at 7.5% p.a., impugning the same, the present appeal is filed.

3. Respondents/claimants 1 to 3 even served, failed to attend and hence taken as heard. Perused the material on record.

4. For the reasons stated in the affidavit filed in support of the petition, the delay of 103 days in filing the appeal is condoned. At request, the appeal is taken up for hearing.

5. The contentions of the learned counsel for the appellant are that taking the earnings of a student of first year engineering as on the

date of accident in 2008 is exorbitant and excessive instead of taking income of non-earning person at Rs.3,000/- p.m. and that the tribunal also erred in not considering the physical involvement in the accident and sought for dismissal.

6. So far as the vehicle number concerned undisputedly including from the evidence of RW.1 employee of insurer with reference to Ex.B1-policy issued in the name of the 1st respondent, the insured is owner of the vehicle bearing No.AP 07 1881 which is involved in accident including from the evidence of eye witness rider of the bike, where the deceased was pillion rider. Once that is substantiated proves including from the Motor Vehicles Inspector's report-Ex.A5 and that was the conclusion when arrived by the tribunal there is nothing to say vehicle not involved or the vehicle is not insured.

7. Coming to the quantum of compensation, the tribunal, no doubt, out of guess work including from the expression of this Court in **B.Ramulamma v. M/s.Venkatesh Bus Union, rep. by A.M.Velu Mudaliya, Bangalore (2009 (6) ALT 784)**, wherein it was held in the absence of proof of earnings of a student a guess work has to be made to arrive at the estimated earnings. Here, Rs.8,000/- taken by the tribunal is excessive, as pointed by the learned counsel for the appellant as he is only student of first year engineering and not even far end of completion much less meritorious and that too the question of prospective earnings does not arise. Even as per **Sarla Verma v. Delhi Transport Corporation**, the multiplier is '17' not '18' from the age of the deceased as 25 years. The age of the father of the deceased was shown about 40 years, there from the multiplier applicable from that age is '15'. If the same is calculated it comes to Rs.48,000/-p.a.(the earnings taken by the tribunal) x 15 = Rs.7,20,000/-. Apart, from it the claimants are entitled to Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Thus, the total compensation comes to Rs.7,55,000/-.

8. Accordingly and in the result, the appeal is partly allowed by reducing compensation from Rs.8,74,000/- to Rs.7,55,000/-. In other

respects, the award of the tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:01-02-2016

pab