

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.222 OF 2016

JUDGMENT:

The wife, parents and minor son of the deceased by name Upender, the claimants in O.P.No.535 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal—cum-Prl. District Judge, (for short, 'the Tribunal'), Nalgonda, maintained under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), for the claim of Rs.20,00,000/-(twenty lakh rupees only) against owner and Insurer of the crime vehicle (Piaggio van) bearing No.AP 09Y 7230 for the death of Upender in the accident dated 28.01.2007 caused by rash and negligent driving of the driver of crime vehicle while the deceased Upender along with one Mahender as pillion rider was proceeding on his Hero Honda Motor Cycle bearing No.AP29L-4072, resulting separation of right leg and later breathed last on 27.02.2007 while undergoing treatment in Sigma hospital, Secunderabad, and the tribunal after contest passed award dated 02.12.2010 granting Rs.3,39,000/-(towards 3/4th liability of the 2nd respondent-Insurer) with interest at 7%p.a. fixing joint liability against both the respondents, impugning the same, filed unnumbered appeal with the contentions in the grounds of appeal that the compensation awarded by the tribunal is utterly low, that the tribunal failed to consider the income of the deceased of Rs.11,000/- from his business though filed income tax returns which is a public document and needs no corroboration, that the tribunal erred in concluding that the deceased corroborated for the accident being triple riding without any evidence on record and fixing 25% contributory negligence is unwarranted and the tribunal ought to have granted amount under some other conventional sums, hence, to set aside the award of the tribunal and allow the appeal as prayed for.

2. The claimant filed the appeal along with a petition vide MACMAMP No.4901 of 2012 to condone delay of 41 days in preferring the appeal stating that due to ill-health he could not file in time. In view

of said submission, the petition is allowed by condoning the delay subject to condition of not entitled to interest till filing of the date of filing of delay condonation petition i.e. 30.07.2012 and the registry is directed to number the appeal if it is otherwise in order and the appeal is taken up for hearing.

3. Heard the learned counsel for the appellants-claimants. The 1st respondent-owner of the crime vehicle who remained exparte before the tribunal, even in the appeal impleaded as 1st respondent, dismissed for default vide Court order dated 09.03.2015 no way fatal to the maintainability of appeal as per the expression of in **M.Chakra Rao v. Y.Baburao**^[1], taken as heard also heard the 2nd respondent-Insurance company and perused the material on record.

4. The claim is for Rs.20,00,000/-. The tribunal awarded of Rs.3,39,000/-. The deceased claimed as businessman with income of Rs.11,000/- p.m. but the tribunal taken of Rs.3,000/-. The contribution on the part of the deceased as a party to the triple riding of the two wheeler being fixed by the tribunal of 25% and fixing remaining on the part of the driver of the 1st respondent-owner of the crime vehicle and on reaching that conclusion the tribunal also relied on the expression of this Court in **United India Insurance Co.Ltd. Vs. K.Anjaiah**^[2]. Hence, for this Court while sitting in appeal against the award of the tribunal, there is nothing to interfere but for to reduce contributory negligence from 25% to 20% with reference to the factual matrix.

5. Coming to the quantum of compensation even as per the expression of Apex Court in **Latha Wadhwa vs. State of Bihar**^[3] in the absence of proof of earnings, minimum of Rs.3,000/- to be taken and the accident taken nearly 6 years after the expression and if the pan card and income tax returns taken into consideration, it shows he was having self-earning with independent avocation, with prospective

increase of 50% with his age 28 years it comes to Rs.5,100/- if 100 rupees minimum towards professional tax deducted, Rs.5,000/- p.m. can be taken and the claimants are 4 in number as dependants, as per **Sarla Verma v. Delhi Transport Corporation** ^[4], for the 4 dependants, $\frac{1}{4}$ to be deducted towards personal expenses of the deceased but not $\frac{1}{3}$, then it comes to Rs.3,750/- x 12 x 17 (multiplier as the deceased is aged 28 years at the time of accident) as per Sarla verma supra, then it comes to Rs.7,65,000/- + Rs.1,70,000/- (Rs.1,00,000/- towards loss of compensation, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance and Rs.25,000/- towards medical expenses) is added which comes to Rs.9,35,000/- and 80% of it comes to Rs.7,48,000/- which is just compensation for which the claimants are entitled.

6. In the result, the appeal is allowed in part by enhancing the compensation from Rs.3,39,000/- to Rs.7,48,000/- (80% contributory negligence of the R.1 vehicle from total compensation of Rs.9,35,000/-) by confirming the rate of interest 7.5% p.a., however, the claimants are entitled to the interest on the enhanced amount only from 01.08.2012 till realization. The respondents are directed to deposit the enhanced amount within one month from today. On deposit or execution and recovery by the respondents, the claimants are permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.01.2016

Vvr

[\[1\]](#) 2001 (1) ALT 495
DB

[\[2\]](#) 2004(4)ALD 441

[\[3\]](#) (2001) 8 SCC 197=AIR 2001 (SC) 3218

[\[4\]](#) 2009 ACJ 1298