

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.696 OF 2016

JUDGMENT:

The claimants, who are no other than brothers and sisters of the deceased by name Chakradhar, filed O.P. No.731 of 2009 on the file of Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Parvathipram, Vizianagaram (for short 'the Tribunal') under Section 166 of Motor Vehicle Act, 1988 (for short 'M.V Act') for Rs.3,00,000/- against respondents viz., driver, owner, insurer and financier of lorry bearing No.AP 16 V 3279 and the Tribunal held that the accident was result of rash and negligent driving of the driver of said lorry—respondent No.1 and passed an award on 17.02.2011 stating that the claimants are not dependants on the deceased and only class-II legal heirs, thereby, entitled to only Rs.55,000/- . Impugning the same, claimants filed the present appeal.

2) The M.A.C.M.A. M.P. No.3566 of 2011 is filed to condone the delay of 33 days in filing the appeal, is condoned as the reasons assigned are in obtaining certified copy and securing funds and to engage the advocate, subject to condition that of not entitled to interest on enhanced amount from the date of award of the Tribunal till 30.08.2011 i.e., filing of the appeal along with delay condonation.

3) Heard learned counsel for appellants and learned standing counsel for the insurer—A.Rama Krishna Reddy, who is infact standing counsel for the 3rd respondent insurance company and thereby required out him to assist the Court for respondents 1 and 2—driver and owner, who remained ex parte before the Tribunal not chosen to contest. In fact respondent No.4 is financier, who cannot be within the meaning of owner under Section 2 (30) of M.V Act as held by the latest three judgment bench expression of the Apex Court in **HDFC Bank Limited vs Kumari Reshma**^[1] apart from the claim dismissed as not pressed against the respondent No.4 financier supra is no way fatal to the maintainability of the appeal. Perused the material on record.

4) The law is fairly settled that merely because the claimants are class-II legal heirs, it cannot be said they are not entitled to just compensation to fix only no fault liability sum under Section 140 of M.V Act for Rs.50,000/- with further sum of Rs.5,000/- for loss of estate and funeral expenses. In fact in the absence of class-I legal heirs even class-II legal heirs and in their absence even agnates or cognates are entitled to compensation either under Section 166 of M.V Act or as per the structured formula under Section 163-A of M.V Act, if they are dependents. In the case of non-dependants what the law settled is what the contribution by the deceased to them alone to be taken into consideration.

5) From the above, coming to the claim of deceased earning Rs.4,500/- per month while working in Hyderabad in a private company besides there is no basis for the same for no any independent evidence in this regard as rightly concluded by the Tribunal. In fact even as per **Latha Wadhwa vs State of Bihar**^[2] in the absence of proof of earnings minimum Rs.3,000/- to be taken and the accident was dated 28.03.2007, which is nearly six years after the expression, with prospective increase Rs.3,600/- per month is to be taken. As the claimants are not dependents and what is the contribution of the deceased to estimate therein after half of the amount is to be deducted in the case of bachelor towards personal expenses, as per the expression of the Apex Court in **Sarla verma vs Delhi Transport Corporation**^[3]. Once such is the case, if Rs.1,800/- per month even taken Rs.1,000/- therein can at best be taken as contribution of the deceased for claimants, who are brothers and sisters and as the age of brothers and sisters are between 34 to 53, this Court has adopted suitable multiplier '14.5' as per the expression of the Apex Court in Sarla Verma supra, it comes to Rs.1,74,000/- (Rs.12,000/- X 14.5). Apart from it, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate as per the three judge bench expression of the Apex Court in **Rajesh vs Rajbir Singh**^[4], in all it comes to Rs.2,09,000/-, is the just compensation to which the claimants are entitled to.

7) Miscellaneous petitions, pending if any in this appeal shall stand closed.

Dt.08.02.2016
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Date:08.02.2016

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[\[1\]](#) 2015 (3) SCC 679

[\[2\]](#) AIR 2001 SC 3218

[\[3\]](#) 2001 ACJ 1298

[\[4\]](#) 2013 ACJ 1403