

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.2509 of 2011

IN/AND

M.A.C.M.A.No.102 of 2016

ORDER:

The claimants, four in number are no other than wife and three minor children of the deceased, Rama Rao, aged about 42 years as per Ex.A2-Post Mortem Certificate and claimed as a Carpenter and earning Rs.150/- per day, who maintained claim under Section 166 of the Motor Vehicles Act(for short 'the Act') for Rs.3,00,000/-, against driver-cum-owner, insured and insurer of the oil tanker bearing No.AP 31 X 5101, since awarded by the tribunal of Rs.2,26,000/- with interest at 6% p.a. with joint liability ; vide award dated 19.10.2009 in O.P.No.532 of 2007, maintained the appeal with contentions in the grounds of appeal that the tribunal gravely erred in not considering Rs.150/- per day towards the earnings of the deceased and the multiplier adopted also incorrect and thereby, the tribunal ought to have been allowed the claim, as prayed for.

2. The appeal is filed with a delay of 440 days and sought for condonation and the reason assigned is facing financial difficulties.

3. Heard and perused the material on record. The

delay is condoned, subject to condition of not entitled to interest on any enhanced amount till date.

4. The appeal is taken up for hearing at request of both sides. Respondents 1 and 2, who are driver-cum-owner, insured, respectively, remained *exparte* before the tribunal impleaded in the appeal and dismissed for default for non-payment of *batta* vide order dated 24.02.2015, no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1].

5. There is nothing to interfere with the finding of the tribunal of the accident was the outcome of rash and negligent driving of the driver of the crime vehicle and covered by policy, so also for the joint liability concerned but for quantum was utterly low to enhance.

6. The accident was dated 04.02.2007. As per **Lata Wadhwa V State of Bihar**^[2], in the absence of proof of earnings, minimum Rs.3,000/- p.m. to be taken and the expression is six years prior to the accident, even taken Rs.3600/- p.m., and the claimants, who are dependants are four in number, 1/4th has to be deducted towards personal expenses of the deceased, as per **Sarla Verma v Delhi Transport Corporation**^[3] followed in

Rajesh Vs. Ranbir Singh^[4], it comes to Rs.2700/-p.m. and Rs.32,400/- p.a. x14(multiplier) = Rs.4,53,600/-. Apart from it, the claimants are entitled to Rs.1,00,000/- towards consortium, Rs.10,000/- towards loss of estate, Rs.30,000/- towards care and guidance to the minor children and Rs.25,000/- towards funeral expenses, in total, it comes to Rs.6,18,600/- is the just compensation the claimants are entitled. Though the claimants claimed Rs.3,00,000/- as compensation, as per the expression of the Apex Court in **Rajesh** (supra), they are entitled to just compensation of Rs.6,18,600/- subject to payment of deficit Court fee under Rule 475 of Andhra Pradesh Motor Vehicle Rules.

7. Accordingly, the appeal is allowed by enhancing compensation from Rs.2,26,000/- to Rs.6,18,600/-. However, the claimants are not entitled to interest on the enhanced compensation but from today till realization at 7.5%. So far as the interest on the original amount till date concerned, what the tribunal awarded at 6% p.a. no way interfered.

8. The claimants/appellants are not entitled to execute the decree without payment of deficit court fee. There is no order as to costs.

9. Miscellaneous petitions, if any pending, shall

stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-01-2016
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[\[1\]](#) **(2001 (1) ALT 495)**
[\[2\]](#) AIR 2001 (SC) 3218
[\[3\]](#) 2009 ACJ 1298.
[\[4\]](#) **2013 ACJ 1403**