

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.39 of 2016

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JUDGMENT :

The claimants four in number of O.P.No.247 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru, (for short, 'the Tribunal') maintained the appeal against owner and insurer of truck (goods container) bearing No.05 M 5848 covered by Ex.B.1-comprehensive policy equivalent to Ex.A.7, maintained the claim for Rs.10,00,000/- under Section 166 of the Motor Vehicles Act, since the Tribunal awarded Rs.5,18,212/- with interest at 7.5 % per annum with joint liability against respondents.

2. The contentions in the grounds of appeal are that the compensation awarded by the Tribunal is utterly low and the Tribunal failed to consider the prospective earning capacity to award, hence to set aside the award and allow the claim as prayed for.

3. Heard learned counsel for the appellants-claimants, vis-à-vis, the learned counsel for the 3rd respondent-insurer, even respondent No.2 remained ex parte before the Tribunal and impleaded in the appeal and dismissed for default is no way fatal to the maintainability of the appeal as laid down in **M.Chakradhara Rao v. Y. Babu Rao** ^[1]. So far as the 1st respondent-driver is concerned, though contested before the Tribunal from the finding of

joint liability even not impleaded since impleaded and dismissed no way fatal to the maintainability of the appeal and the same is recorded.

4. At request of both sides, the appeal is taken up for hearing.

5. Heard and perused the material on record.

6. Coming to the contention of the insurer, the driver has no valid driving licence and the liability is if not to exonerate to pay and recover cannot sustain from the cross-examination of RW.1 with reference to Ex.B.2 and endorsement at Column No.9 of there is a transport licence as on the date of accident i.e., 14.10.2006 of the commercial vehicle (goods container).

7. Now coming to the quantum, the deceased was AR Police Constable No.1039 in District Police Office, West Godavari District, aged about 45 years as per Ex.A.3-Postmortem report and the multiplier that is applicable to the age of 45 years is 14 and after 46 years is 13, therefore, it is proper to adopt '13.5' as per **Sarla Verma vs. Delhi Transport Corporation** ^[2].

8. Coming to the earnings of the deceased, as per the last pay certificate-Ex.X.1 proved from the evidence of PW.3 as discussed in Para 18 of the award of the Tribunal, the gross salary is Rs.5,792/-, from the age if prospective earnings taken into consideration as per the Sarla verma supra and reiterated in **Rajesh v. Rajbir**

Singh^[3] 30% increase is required, it comes to Rs.7,529.60/- and if Rs.1,329.60 is deducted towards compulsory deductions i.e., professional tax, income tax, etc., an amount of Rs.6,200/- can safely be taken into consideration and the claimants are even four in number, among them the 2nd claimant is a major son and the others are minors, if 1/3rd deducted towards personal expenses as per Sarla Varma Supra at paras 32 and 33 of more than three dependants 1/4th deduction is not applicable, it comes to Rs.6,69,600/-. In addition to that the claimants are entitled to Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.20,000/- towards care and guidance to two minor children and Rs.10,000/- towards loss of estate. Thereby the claimants are awarded Rs.8,24,600/-, which is the just compensation.

9. Accordingly and in the result, the appeal is allowed in part enhancing the compensation from Rs.5,18,212/- to Rs.8,25,000/-. However, the claimants are not entitled the interest on the enhanced amount, but from today as per the docket order dated 26.06.2015.

10. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

5th January 2016.

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[\[1\]](#) 2001(1) ALT-495(DB)
[\[2\]](#) 2009 ACJ 1298
[\[3\]](#) 2013 ACJ 1403 = (4) ALT – 35 (SC)