

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.5068 of 2011

IN/AND

M.A.C.M.A.No.717 of 2016

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ORDER :

Heard the learned counsel for the claimants/appellants vis-à-vis the 2nd respondent insurer in the un-numbered appeal and the delay condonation application of 320 days in filing the appeal. Perused the material on record

2. For the reasons stated in the affidavit filed in support of the petition, the delay of 320 days in filing the appeal is condoned, subject to the claimants are not entitled to claim interest on any enhanced amount but from today.

3. At request, the appeal is taken up for hearing. The 1st respondent, who is owner of car bearing No. AP 10V 0525 remained exparte before the tribunal and even impleaded in the appeal and dismissed for default, no way fatal to the maintainability of the appeal vide M.Chakra Rao v. Y.Babu Rao @Reddemma ^[1] and the same is recorded.

4. It is the contention of the learned counsel for the claimants that the tribunal ought to have been awarded Rs.4,00,000/- as the claim is under Section 166 of the Motor Vehicles Act and granted Rs.1,34,500/- with interest @7% p.a. Hence, prayed to allow the appeal.

5. Whereas it is the contention of the learned counsel for the 2nd respondent-insurer that the award of the tribunal holds

good and there is nothing to interfere with the same and prayed to dismiss the appeal.

6. It is claimed that the deceased was earning Rs.3,500/- p.m. but the tribunal taken the earnings of the deceased at Rs.15,000/- p.a. The finding of the tribunal that the accident was the result of rash and negligent driving as main contribution of the driver of the crime vehicle of the 1st respondent. No doubt, the deceased while crossing the road should have been averted the accident despite diligent in observing the vehicles through and there is composite negligence on his part also. However, the finder of last opportunity with the driver of the vehicle who could avert, had he been diligent but for his negligence thereby 90% liability fixed on the driver of the vehicle for his composite negligence to make the respondents i.e., owner and insurer to be liable for policy covered the risk.

7. Now coming to the quantum of compensation, 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. The accident was occurred in January, 2009 i.e., about 8 years after the accident. However, as it is claimed that the deceased was earning only Rs.3,500/- p.m., the same amount is to be considered. If the same is calculated, it comes to Rs.3500/- p.m. x 12 = Rs.42,000/- p.a. and 1/3rd deducted towards personal expenses, it comes to Rs.28,000/- p.a. and the same is multiplied with multiplier '12', it comes to Rs.3,36,000/-. Apart from the same, the claimants are entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Thus,

in total it comes to Rs.3,71,000/- and 90% of the same comes to Rs.3,33,900/-.

8. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.1,34,500/- to Rs.3,33,900/-but however the interest at 7.5% p.a. is awarded on the enhanced amount from today i.e., 12.02.2016 only. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:12-02-2016

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

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