HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.2193 OF 2011
IN/AND
MACMA No.1201 OF 2016

JUDGMENT:

This appeal is preferred by the claimants against the award dated 26.10.2010 in M.V.O.P. No.237 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar, (for short, the Tribunal) with the delay of 26 days.

02. Heard learned counsel for the appellants/ claimants and the delay is condoned subject to condition not entitled to interest on the enhanced amount from the date award till the date of appeal.

03. The appeal is taken up for hearing and heard the learned counsel for the appellants and taken as heard for respondent No.3. Respondent Nos.1 and 2, who is owner and insurer of the crime vehicle, remained ex parte before the Tribunal, even impleaded and served, but none appeared, hence the appeal is dismissed for default against respondents 1 and 2, is no way fatal vide **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**[1].

04. The appellants/ claimants are the wife, unmarried daughter and two major sons, though the claimants 2 to 4 claimed as students, they are majors and as per Exs.A.4 and A.8, Post Mortem Examination Report and Driving Licence of the accident, by the date of accident, he was aged about 50 years. The Tribunal, after considering the material on record, awarded Rs.7,24,427/- with interest at 7.5% per annum against the respondents.

05. The appeal is maintained by the claimants showing all the respondents to the claim petition, who are owner and insurer, with the grounds of appeal that the Tribunal ought to have been awarded the compensation as prayed for or more than that they are claimed, gravely

erred in not considering the gross income with prospective increase and erred in making total deduction 1/3rd. but mistakenly deducted 2/3rd at one stage and ignored future prospects since the service of the deceased remained for 10 years. Hence, to allow the appeal as prayed, for awarding just compensation by enhancement.

06. The manner of the accident, from the finding of the Tribunal, was outcome of the negligence of the driver of the crime tipper bearing No.AP 16 TU 2094, while the deceased having attended the second shift duty in OCP-I of SCC Limited Godavarikhani and at 7.00 PM he was returning home on his motor cycle bearing No.AP 01 K 5216, when he crossed 10A incline, the tipper with coal load negligently parked without indicators block the visibility, therefrom dashed the stationed tipper from behind and sustained injuries and was succumbed therefrom. On a report, the police Godavarikhani II town registered a case in Crime No.31 of 2007 against the driver of the tipper, after investigation police filed charge sheet, against the driver of the tipper for parking the vehicle without parking lights. The Motor Vehicle Inspector report shows no mechanical defects in two vehicles.

07. As per Ex.A.7 – pay slip for the month of March, 2007, the deceased was drawing an amount of Rs.12,195/- towards salary, however from the very pleading, the deceased while proceeding on his bike dashed the stationed tipper, if he had diligent from the headlights of the bike, he could avert the accident, but for also no doubt the stationed vehicle without blinking lights contributed the accident, thereby it is just to apportion the negligence 50% each. Once such is the case, the salary certificate of the deceased shows the gross salary of Rs.12,195/-, he was aged about 50 years as referred supra and got 10 years of service, as per the expression of the Apex Court reported in **Rajesh and others v. Rajbir Singh and others**[2], the prospective increase can also be taken into consideration and as such, if the deceased is aged between 40 to 50

years, prospective increase is up to 30% and above 50 up to 60, it is 15% and therfrom even taken 25% prospective increase, it comes to Rs.15,243/- (12,195/- x 25/100), even taken income tax and compulsory deduction, the earnings of the deceased comes to Rs.12,956/- (Rs.2,287 – Rs.15,243/-), therefrom 1/4th of the earnings should be deducted towards his personal expenses. Hence, the monthly contribution towards family members of the deceased comes to Rs.9,717/-. As per the expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**[3], the multiplier applicable for the persons aged between 46-50 is, '12', thereby the loss of earnings comes to Rs.13,99,248/- (Rs.9,717/- x 12 x 12). Apart from the loss of earnings, the claimants entitled for an amount of Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate vide expression of the Apex Court in **Rajesh's case** referred to supra. In all, it comes to 15,34,248/-(13,99,248/-+1,35,000/-). Out of it, 50% of the liability of the respondents amounts to Rs.7,67,124/- rounded to Rs.7,67,500/- (Rupees seven lakhs, sixty seven thousand and five hundred only)

08. Accordingly and in the result, MACMA MP No.2193 of 2011 is allowed and the appeal is partly allowed, while fixing 50% liability on the deceased and 50% liability on the respondents 1 to 3, owner and insurer of the stationed tipper without blinking lights, the petitioners are entitled for an amount of Rs.7,67,500/- (Rupees seven lakhs, sixty seven thousand and five hundred only) with interest @ 7.5% per annum, however not entitled to the interest on the enhanced amount for the period of delay in filing the appeal. In other respects, the award of the Tribunal holds good. No costs.

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

Dr. B. SIVA SANKARA RAO, J

10.02.2016
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[1] 2002 ACJ 828

[2] 2013 ACJ 1403

[3] (2009) 6 SCC 121