HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.3390 OF 2008
AND/IN
CROSS-OBJECTION(sr)No.49693 OF 2008

JUDGMENT:

The 2nd respondent among the two respondents including the owner of the motor cycle bearing No.AP30 C 258 in O.P.No.132 of 2004 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-I Additional District Judge, Vizianagaram, (for short,'the Tribunal'), filed by the wife, minor son and mother of the deceased by name Tirumalaraju Viswanadha Varaha Varma, who died in motor accident, maintained under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, for a claim of Rs.30,00,000/- since granted Rs.17,09,750/- with interest at 6%p.a. with joint liability against both the respondents by award dated 25.01.2008, having been aggrieved by the said award, preferred the present appeal contending that the quantum is excessive and exorbitant. Hence to reduce the quantum.

2. On the other hand, the claimants maintained Cross-Objections (sr) No.49693 of 2008 contending that the compensation awarded by the tribunal is utterly low and the same may be enhanced by dismissing the appeal.

3. Heard and perused the material on record.

4. The fact that because of both the vehicles i.e. motor cycle of the deceased and of the 1st respondent coming in opposite direction, the accident occurred which is proved from the record from which the tribunal rightly taken 50% contributory negligence on the part of the deceased also from the outcome of composite negligence of both the vehicles. When such is the case, for this Court while sitting in appeal, there is nothing to interfere even though in the cross-objections it is one of the contentions that the tribunal ought to have fixed total liability on the rider of the motor cycle of the 1st respondent rather than fixing

contribution on the part of the deceased.

5. Now coming to the quantum of compensation whether excessive or utterly low what is the just compensation concerned, the deceased was claimed as businessman and P.W.2 the Junior Assistant in the Commercial Tax Department spoke about turnover of the deceased from the so called accounts pertaining to the years 2001-02 and 2002-03 and the accident was dated 26.06.2003, the tribunal though there is no net profit from any of the returns, taken the earnings of the deceased at Rs.3,00,000/- and after 1/3rd deduction from the claimants are 3 in number, fixed Rs.2,00,000/- per annum, and from the age of the deceased about 35 years from the postmortem report Ex.A.2 adopted multiplier 17 instead of 15 or 16 as per the expression of Apex Court in **Sarla Verma v. Delhi Transport Corporation**[1]. The amount of net income of 2lakhs out of 3 lakhs gross income as earnings of the deceased taken by the tribunal is even with no basis and ought to have been reduced but from the expression of the Apex Court in **Sarla Verma** supra**,** reiterated in **Rajesh v. Rajbir Singh**[even for a businessman or fixed income person, prospective earnings can be taken and even that is taken and from the multiplier 15.5 or 16 that is at best to be applied and even other conventional amounts like loss of consortium, funeral charges, loss of estate, attendant and transport charges etc., apart from care and guidance to the 2nd claimant-minor is taken, It requires no interference with the compensation granted by the tribunal neither to enhance or to reduce.

6. In the result, both the appeal and Cross-Objections are dismissed, however, the rate of interest at 6%p.a. awarded by the tribunal is enhanced to 7.5%p.a. only from the date of Cross-Objections till realization. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 04.08.2016
Vvr

[1] 2009 ACJ 1298

[2] 2013(4)ALT 35(SC)