

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.3245 OF 2011

IN/AND

MACMA No.449 OF 2016

JUDGMENT:

The claimants of O.P. No.190 of 2009 three in number, no other than wife, major son and married daughter of the deceased, Venkateswara Rao, aged about 56 years as per Ex.A.3-Post Mortem Report, maintained the claim under Section 166 of the Motor Vehicles Act, 1988 for Rs.3,00,000/- against the driver, owner and insurer of the Tata Tipper lorry bearing No. AP 5 TT 2067, from the contest and from the evidence of P.Ws.1 and 2 and Exs.A.1 to A.3 and Exs.B.1 and B.2, the Tribunal since awarded compensation of Rs.2,04,720/- with interest @ 7.5% per annum by taking earnings of the deceased at Rs.2,000/- per month, impugning the same, the said quantum as utterly low, maintained the appeal with delay of 136 days in saying reason for the delay is due to lack of funds to file appeal after getting certified copies.

02. The contentions are that the Tribunal ought to have considered the earnings of the deceased as deposed by P.W.2 that the deceased running coffee hotel and earning Rs.5,000/- per month, for which it is difficult to secure any proof for running coffee hotel.

03. Whereas it is the contention of the counsel for the insurer - R.3 that the compensation awarded by the tribunal is itself excessive, that there is no justification to condone the delay of 136 days in filing the appeal and hence to dismiss the appeal.

04. R.2 served, failed to attend. Against R.1 even dismissed for default, it no way fatal to the appeal, vide expression in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**^[1].

05. Perused the material on record. The delay is condoned subject to condition of not entitled interest on any enhanced amount, if

any, but from today .

06. A perusal of the material on record before the Tribunal. The impugned award shows that the deceased was running coffee hotel. The accident was dated 03.02.2009. The Tribunal having held that the accident was the result of rash and negligent driving of the first respondent to the claim petition, there is also policy covered by Ex.B.2 covers the risk. Hence, the respondents are liable.

07. Now coming to the quantum, in the absence of proof of earnings, as per the expression of Apex Court in **Latha Wadhwa v. State of Bihar**^[2], a minimum income can be taken at Rs.3,000/- per month and as the accident was nearly 8 years after the said expression, even the earnings taken at Rs.3,800/-, therefrom if 1/3rd deducted towards personal expenses of the deceased, it comes to Rs.2,533/- and as per the expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**^[3], the multiplier applicable for the persons aged 56 years is '9', therefrom the claimants entitled for an amount of Rs.2,73,564/- (2,533 x 12 x 9) towards loss of earnings. Apart from the loss of earnings, the claimants also 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 v. Rajbir Singh**^[4]. In all, the appellants/ claimants are entitled for an amount of Rs.4,08,564/- (2,73,564/- + 1,35,000/-)

08. Accordingly, and in the result, MACMA MP No.3245 of 2011 is allowed and the appeal is allowed enhancing the compensation from Rs.2,04,720/- to Rs.4,08,564/- subject to condition of payment of court fee over and above Rs.3,00,000/- before the Tribunal under Rule 475 of the APMV rules, failing which the award is unexecutable, and subject to condition of not entitled on the enhanced amount from the date of petition, but from today.

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

stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08.02.2016
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[\[1\]](#) 2002 ACJ 828
[\[2\]](#) AIR 2001 (SC) 3218
[\[3\]](#) 2009 ACJ 1298
[\[4\]](#) 2013 ACJ 1403