

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Cross-Objections(SR) No.786 of 2006

in/and

MACMA No.2969 OF 2005

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including the owner of the Auto bearing No.AP 5 X 7874, in the claim maintained claim u/s.163-A of the Motor Vehicle Act,1988 (*for short, 'the Act'*), in O.P.No.258 of 2002 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-IV Additional District Judge, East Godavari, Kakinada, (*for short, 'Tribunal'*), by the four claimants who are wife and children of the deceased by name Appanna Reddy @ Appanna, aged about 40 years as per the Ex.A.6 Post mortem report, for compensation of Rs.4,00,000/- since awarded by the tribunal of Rs.3,02,000/-(Rupees three lakhs two thousand only) by fixing joint liability against both the respondents (owner and Insurer of the auto) with interest at 9%p.a., aggrieved by the same, preferred the present appeal with contentions vis-à-vis submissions of the learned counsel for the Insurer in the course of hearing that the tribunal ought to have considered that non-impleadment of the driver and insurer of the opposite coming vehicle i.e. lorry to the auto is fatal to the very maintainability of the claim petition apart from the negligence on the part of the auto driver and there is no fault of the driver of the 1st respondent to mulk the Insurer-2nd respondent and the 1st respondent-owner of the auto for liability and the compensation awarded is excessive, exorbitant to reduce including funeral expenses of Rs.5,000/- which is beyond Rs.2,000/- to Rs.2,500/- and rate of interest beyond 6% p.a. as laid down in the expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** ^[1] in awarding 9%p.a.

2.Whereas, it is the contention of the learned counsel for the respondents/claimants/cross-objectors for the owner failed to attend remained *ex parte* even before the tribunal, the tribunal ought to have awarded compensation as prayed for.

3. Heard and perused the material on record.

4. The tribunal took earnings of the deceased of Rs.2,250/-p.a. by the date of the accident 25.02.2002. The deceased was passenger of

the passenger auto is not in dispute. As there is even no number of the opposite coming vehicle which is not auto but lorry even to implead, the question of impleadment of unknown lorry driver, owner and insurer does not arise and the law is well settled that joint tort features are liable and any non-impleadment of the opposite lorry even known, no way fatal to the maintainability of the claim but for remedy of the Insurer to proceed against the other vehicle also to recover after satisfying with the award without even necessity of claiming separate claim but for execution to decide the liability apportionment if any in this regard.

5. Now coming to the compensation, the claimants are four in number who are no other than the wife, major son, major daughter and minor son of the deceased. Major son is not dependent but for unmarried major daughter even thereby what the tribunal deducted of 1/3rd towards personal expenses is just and on that there is nothing even in the cross-objections.

6. Now coming to the claim u/sec. 163-A of the M.V.Act, it is the Schedule-II of the table that applies. The law is fairly settled, more particularly, from the expression of the Apex Court in **Sarla Verma** supra. However, the fact remains from the subsequent expression of the Apex Court in **Kishan Gopal Vs. Lala** ^[2] at para 34 page 257, where it was observed that Rs.15,000/- p.a. given in the table to be read as Rs.30,000/- p.a. If such is the case, besides Rs.30,000/-, the conventional sums to be awarded including the funeral expenses of Rs.25,000/- and care and guidance to the minor children. Then what the cross-objectors claiming of Rs.4,00,000/- is no way excessive and enhanced to that extent as conceded by both sides however by reducing the rate of interest from 9%p.a. to 7.5%p.a.

7. Accordingly and in the result, the appeal (MACMA No.2969 OF 2005) is partly allowed and Cross-Objections (Cross-Objections(SR) No.786 of 2006 is allowed by enhancing the compensation of Rs.3,02,000/-awarded by the tribunal to Rs.4,00,000/- as prayed for by reducing the interest from 9% p.a. to 7.5%p.a. Rest of the award of the tribunal holds good. There is no order as to costs.

8. Pending miscellaneous petitions, if any, in this appeal shall

stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:15.07.2016
Vvr

[\[1\]](#) 2009 ACJ 1298

[\[2\]](#) (2014) 1 SCC 244