

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.36 OF 2004

JUDGMENT:

The claimants, who are parents of the deceased minor girl aged about 6 years as per Ex.A3—post mortem report, maintained O.P. Nos.55 and 56 of 1988 on the file of Motor Accidents Claims Tribunal—cum—District Judge, Adilabad (for short 'the Tribunal') against owner, driver and insurer of van bearing No.UPL 8276, for compensation of Rs.30,000/- under fault liability and Rs.15,000/- towards statutory liability under no fault liability respectively under Sections 110-A and 92-A of Motor Vehicles Act, 1988 (for short 'the Act') respectively. The Tribunal, on contest, passed a common award on 27.02.1989 granting Rs.20,000/- in favour of the claimants against the respondents with interest at 12% per annum. Impugning the quantum as utterly, the claimants maintained the present appeal.

2) Heard learned counsel for the appellants and learned standing counsel for respondent No.3—insurer. It is the contention of the learned counsel for appellant that respondent No.1—owner of the vehicle remained exparte before the Tribunal, even impleaded in this appeal dismissed for default is no way fatal to the maintainability of the appeal vide *Meka Chakra Rao vs Yelubandi Babu Rao*¹ and it is represented that respondent No.2—driver of the vehicle also remained exparte before the Tribunal and not necessary party to the appeal and the same is recorded. Perused the material on record.

3) No doubt, there is nothing mentioned as the deceased is the only daughter or one of the children of the claimants. The accident occurred on 07.11.1987. It is governed by the M.V Act, 1988, by the time of filing claim petitions O.P. Nos.55 and 56 of 1988, out of it O.P. No.55 of 1988 is made for a compensation of Rs.30,000/- under fault liability and O.P. No.56 of 1988 is made for a compensation of Rs.15,000/- towards statutory liability under no fault liability. Section 140 (2) of M.V Act amended w.e.f., 04.11.1994 by Act 54 of 1994 making compensation for no fault liability for death to Rs.50,000/- from Rs.25,000/-.

¹ 2001 (1) ALT 495 DB

4) The learned standing counsel for the insurer placed reliance on the expression of this Court in *Oriental Insurance Company Limited rep. by its Branch Manager, Chilakaluripet vs Murari Lakshmaiah*² which says as on the date of claim the Act, which is in force to be made applicable. In fact, there is a subsequent judgment says the beneficial legislation provisions of the benefit of the amendments by the time the claim petitions ripe for disposal can be taken into consideration. Leave it as it is, even under the Act, no fault liability itself is Rs.25,000/- as on the date of filing of claim petition and by the date of disposal on 27.02.1989 even as the amended Act making it to Rs.50,000/-, which came into force on 14.11.1994 and not by the date of disposal of the claim petition. Therefrom, even taken the no fault liability of Rs.25,000/- and atleast at Rs.5,000/- per annum for the six years old minor girl of Rs.30,000/- - Rs.5,000/- X 6) and even loss of estate at Rs.5,000/-, Rs.60,000/- is the just compensation though claimed only Rs.30,000/-. The claim need not be higher from what is entitled is to be determined just compensation, subject to payment of deficit court fee under Rule 475 of Andhra Pradesh Motor Vehicles Rule, 1989.

5) Accordingly and in the result, the appeal is allowed by enhancing the compensation from Rs.20,000/- (Rupees twenty thousand only) to Rs.60,000/- (Rupees sixty thousand only) with interest at 7.5% per annum from the date of claim petition till realization by giving deduction whatever the amount so far paid by following the three judge bench expression of the Apex Court in *Rajesh vs Rajbir Singh*³. In other respects the award of the Tribunal holds good. No order as to costs.

6) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.30.08.2016
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² 1997 (3) ALD 813

³ 2013 ACJ 1403

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Date:30.08.2016

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