

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL MISCELLANEOUS APPEAL NO.2014 OF 2002

JUDGMENT:

This appeal is filed by the claimants challenging the award dated 28.06.1995 in O.P.No.324 of 1988 passed by the Motor Accidents Claims Tribunal, Nellore.

2. It is the submission from perusal of the record that Smt.M.Bhaskara Lakshmi, learned counsel, who filed the appeal has withdrawn her vakalat, as she is the Standing Counsel for the

3rd respondent-New India Assurance Co., Limited, Guntur, to avoid conflict of interest and the same was intimated to the parties but they failed to respond. The matter is pending for past nearly 14 years with no progress. Notices also could not be served. Hence, this Court feels it just to appoint legal aid counsel for the appellants/claimants to submit their case to decide on merits. Hence, Sri B.Parameswara Rao, advocate is appointed as legal aid counsel. His fee is being fixed and can be paid as per Rules by the High Court Legal Services Authority pursuant to this order.

3. Coming to the factual matrix of the appeal in brief, the claimants are no other than wife and two minor children of the deceased by name Subrahmanyam, aged between 36-40 years, as per the post mortem report referred in the award passed by the tribunal. Respondents 1 and 3 are the owner and insurer of the lorry bearing No.AAK 123. As per the claim petition, the deceased was travelling in the lorry of the 1st respondent. PW.2

also alleged eye witness travelling in the lorry. The finding of the tribunal is that the deceased, who alleged to be travelling in the lorry as owner of goods was a gratuitous passenger and thereby out of the compensation arrived of Rs.80,000/- prayed for, the insurance company cannot be made liable beyond Rs.10,000/- under I.M.T. 14 B as was prevailing and beyond that the owner-1st respondent alone held liable for remaining Rs.70,000/- compensation. It is impugning the same present appeal is maintained.

4. Heard the learned counsel appointed supra for the claimants/appellants and the 3rd respondent-insurer. Perused the material on record.

5. The tribunal taken the earnings of the deceased at Rs.750/- p.m. as per the rates prevailing by then from the evidence on record and after deducting 1/3rd towards personal expenses of the deceased arrived at Rs.500/- p.m. = Rs.6,000/- p.a. From that even, as per **Sarla Verma v. Delhi Transport**

Corporation ^[1] the multiplier applicable is '15' but not '14' as taken by the tribunal. In fact the tribunal arrived a total amount of Rs.90,000/- in all but restricted the compensation to Rs.80,000/- under the impression that it cannot be award more than prayed for though otherwise entitled. Law is fairly settled by several expressions of what is entitled is just compensation and not to confine to the claim made even there from the claimants are entitled to what the tribunal arrived of Rs.90,000/- vide **Rajesh**

Vs. Ranbir Singh ^[2] referring to earlier expressions. When such is the case, the tribunal ought to have been awarded Rs.90,000/- as arrived, instead of confined to the amount claimed of

Rs.80,000/-.

6. Accordingly and in the result, the appeal is partly allowed by confining the liability of the insurer of Rs.10,000/- and for the remaining liability fixed on the owner-1st respondent of Rs.80,000/-. In other respects, the award of the tribunal holds good. There is no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22-02-2016

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

[\[2\]](#) 2013 ACJ 1403