

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.620 OF 2016

JUDGMENT:

The claimants 1 to 3 no other than the parents and sister of the deceased by name Mahammad Zaheeruddin aged about 21 years died of the motor accident dated 24.07.2006 from the claim that while the deceased was proceeding on motor cycle bearing No.AP 9 AC 5033 at Madhapur from the alleged wrong parking of the vehicle bearing AP 9V 8327 of 1st respondent insured with the 2nd respondent in the night by dashing the vehicle and sustained multiple injuries and succumbed while shifting to hospital, maintained the claim under Section 163-A read with Section 163-B of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), for compensation of Rs. 5,00,000/- (Rupees five lakhs only) in the M.V.O.P.No.1485 of 2006, and the tribunal passed award dated 10.07.2009 dismissing the claim in toto, holding that there is no evidence the vehicle was parked wrongly without any indication and though the P.W.3 deposed that the driver of R.1 parked the vehicle without indications but parking vehicle without switching on the lights is irregular if negligence is pleaded and the claimants have to maintain the petition under Section 166 of the Act and the driver of the R.1 not chargesheeted and the tribunal further held the claim could have been maintained u/sec. 166 of the M.V.Act instead of 163-A of the M.V.Act, and even the P.Ws. 1 and 2 could not speak anything regarding occurrence and the deceased could have averted the accident, had he taken proper care, hence the tribunal is right in dismissing the petition of the claimants.

2. Impugning the said award, the claimants preferred the present appeal with the grounds in the appeal that the tribunal ought to have appreciated that the claim petition is filed under Section 163-A of the Act as under this Section rash and negligent driving need not be proved even the negligence of deceased also and as such the claim petitioners are entitled for compensations but the tribunal erred in

dismissing the same, hence to set aside the award passed by the tribunal by allowing the appeal.

3. The MACMA MP No.185 of 2011 for condoning delay in presenting the appeal is allowed subject to condition of not entitled to any interest if at all to allow the claim but from today and the registry to number the appeal if it is otherwise in order and the appeal is taken up for hearing.

4. Heard the learned counsel for the appellants-claimants. The Insurer(R.2) even served failed to attend and R.1-owner who remained *exparte* before the tribunal even impleaded in appeal and notice not served and dismissed for default no way fatal to the maintainability of the appeal as per **M.Chakra Rao v. Y.Baburao**^[1] and perused the material on record.

5. The Apex Court in **NIC Vs. Sinita**^[2], held that a joint reading of Sections 140 with 4 sub-sections and 163-A with three sub-sections of the Act, indicate that what prevented of pleading and proving or even contending is for no fault liability and though in claim u/sec. 163-A of the M.V.Act, the claimant need not plead that does not take away proof by the respondent i.e. owner of the vehicle, Insurer or the insured, as the case may be, of any of the negligence on the part of the deceased or contribution, however in such case, the burden is on the Insurer.

6. In fact, though there is no independent evidence adduced by the Insurer but for cross-examined including of P.Ws.1 to 3 and from the very F.I.R. and the inquest report filed shows the FIR registered is against the deceased as finder of last opportunity while riding motor cycle dashed against the stationed vehicle of R.1 insured with the R.2 in the night, there is no further proof required from the Insurer as laid down by the Apex Court in **National Insurance Company Vs. Rattani**^[3] which is reiterated in **National Insurance Company Limited Vs. Savitridevi**^[4]. Hence the same is sufficient to say the

deceased contributed to the accident as finder of last opportunity to avert the accident, had he been diligent. However from the facts when there is no contribution by the driver to the accident by parking the vehicle on the road without blinking lights but for nothing is proved, the respondents 1 and 2 cannot abdicate their liability much less to avoid equally to the contribution, hence, the tribunal ought to have been allowed the claim for 50% contribution of the respondents instead of dismissing in toto.

7. Now coming to the quantum, as the deceased was unmarried, the age of the mother is about 40 years, father of 42 years, between 41 to 42 in the claim u/sec. 163-A of the Act, to be taken and the multiplier applicable is 15 even to take 15.5 from the age of the mother above 40 years. Coming to the earnings when there is no proof, as per the latest expression in **Kishan gopal Vs.Lala** ^[5] specified in schedule of Act under 163-A the earnings to be taken as Rs.30,000/- per annum, and the same if taken into consideration, if half deducted towards personal expenses, it is of Rs.15,000/-p.a.x15.5(multiplier), it comes to Rs.2,32,500/-, and Rs.4,500/- under Section 163-A of M.V.Act towards loss of estate is awarded, it comes to Rs.2,37,500/- even rounded to Rs.2,38,000/- and 50% of it is of Rs.1,19,000/-, the respondents are liable to pay to the claimants but the claimants are not entitled to interest on the compensation from today.

8. In the result, the appeal is allowed in part by granting compensation of Rs.2,38,000/- (Rupees two lakhs thirty eight thousand only). The respondents are liable to pay the compensation of 50% towards their contributory negligence of Rs.1,19,000/-. However, the claimants are not entitled to interest from today. The respondents are directed to deposit the enhanced amount within one month from today. On deposit or execution and recovery by the respondents, the claimants are permitted to withdraw the same. 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: 05.02.2016
Vvr

[\[1\]](#) 2001 (1) ALT 495
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[\[2\]](#) (2012) 2 SCC 356
[\[3\]](#) (2009) 2 SCC 75
[\[4\]](#) 2013(11) SCC 554
[\[5\]](#) 2014(1) SCC page 244