

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.5598 OF 2011

IN/AND

MACMA No.462 OF 2016

JUDGMENT:

The claimants of O.P. No.1396 of 2008 maintained the claim under Section 166 of the Motor Vehicles Act, 1988 for Rs.6,00,000/- against the owner and insurer of DCM van bearing No.AP 29 V 0455, from the award of the Tribunal fixing the 50% contribution on the part of the deceased while crossing the road negligently without observing the vehicle and the remaining 50% on the driver of the DCM van, having arrived the compensation Rs.5,30,000/- wherein awarded 50% i.e. Rs.2,65,000/- awarded to the claimants with interest @ 7.5% per annum vide award dated 06.09.2010 and impugning the same, the present appeal is preferred with delay condonation of 198 days in saying the delay occurred due to financial difficulties after obtaining certified copies in securing funds for cause filing the appeal.

02. Heard. Delay condoned subject to condition of not entitled to interest on the enhanced compensation, if any, but from today.

03. R.1 contested in the claim petition, even impleaded in the appeal dismissed for default for non payment of batta. Here as the quantum is in dispute, even the appeal is dismissed for default against R.1, no way fatal to the appeal.

04. It is contention of the counsel for the claimants that the contributory or composite negligence fixed on deceased is untenable and the Tribunal ought to have awarded the compensation as prayed for. Whereas it is the contention of the counsel for the insurer that the award of the Tribunal holds good and there is nothing to interfere and hence to dismiss the appeal.

05. Heard and perused the material on record.

06. Coming to the merits, undisputedly, the deceased was negligently crossing the road, as per the finding of the Tribunal and

from the evidence on record including on the basis of Ex.A.3 charge sheet and Ex.A.5 Motor Vehicle Inspector's Report against the driver of the Van, however if the van driver having control over the vehicle accident could have not been occurred, though the deceased also contributed. Thus, in the factual scenario the Tribunal went wrong in 50% contribution of the deceased and reduced to 25% negligence on his part.

07. Coming to the 75% liability of the insurer is concerned, even taken the earnings of the deceased at Rs.3,000/- per month as per the expression of the Apex Court in **Latha Wadhwa v. State of Bihar**^[1] with proportionate increase to the date of accident from the date of expression, the monthly earnings of the deceased arrived to Rs.3,700/- , therefrom $\frac{1}{3}$ rd to be deducted towards his personal expenses of the deceased, then it comes to Rs.2,467/- per month. As per the expression of the Apex Court in **Sarla Varma v. Delhi Transport Corporation**^[2] the multiplier for the persons aged between 21 and 25 is 18, thereby the loss of earnings arrived to Rs.5,32,872/- (2,467 x 12 x 18), apart from the loss of earnings, the first petitioner is 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**^[3], in all the compensation arrived to Rs.6,67,872/-, out of it, the insurer is liable to pay 75 % of the compensation, i.e. Rs.5,00,904/-.

08. Accordingly, and in the result, the MACMA MP No.5598 of 2011 is allowed and the appeal is partly allowed. No costs.

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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[\[1\]](#) AIR 2001 (SC) 3218

[\[2\]](#) 2009 ACJ 1298

[\[3\]](#) 2013(4)ALT 35(SC)