

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.3222 OF 2010

IN/AND

MACMA No.178 OF 2016

COMMON JUDGMENT:

The injured/claimant of O.P. No.262 of 2005 made the claim for Rs.12,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained in the accident dated 22.12.2004 against the owner and insurer of the Car bearing No.KA 01 M 8805 covered by Ex.B.1-policy, impugning the award of the Motor Accidents Claims Tribunal – cum District Court, Kadapa, (for short, 'the Tribunal') dated 19.02.2008 granting Rs.2,96,200/- with interest at 7.5% per annum as utterly low to enhance with contentions in the grounds of appeal that the Tribunal gravely erred in not considering the multiplier method by taking into consideration of the earnings of the deceased and the Tribunal also gravely erred in not considering the 65% disability as per the disability certificate deposed by P.Ws.2 and 3 with reference to Exs.A.13 issued by the Medical Board, Kadapa, dated 05.05.2007 and thereby sought for allowing the appeal as claimed before the Tribunal and for the delay in filing the appeal, the reasons assigned are financial difficulties.

02. The first respondent owner of the vehicle remained exparte before the Tribunal and even impleaded in the appeal dismissed for default on 31.12.2012 is no way fatal vide expression of the Apex Court reported in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**^[1]. The same is recorded. Delay is condoned subject to not entitled for the interest from the date of claim petition, if any, but from today. The appeal is taken up for hearing.

03. Heard and perused the material on record.

04. No doubt as can be seen from the evidence of P.Ws.1 to 3 with

reference to Exs.A.1 to A.14 and Exs.X.1 to X.6 and from the evidence of R.W.1 with reference to Exs.B.1 and B.2, the medical expenses allegedly incurred Rs.2,72,986/- under Ex.A.7 and the transportation charges allegedly incurred Rs.81,000/- under Ex.A.6, there is great escalation, as can also be seen from the observation of the Tribunal. Undisputedly there is disability certificate in the earlier accident in O.P. 496 of 2003 filed showing 35 to 40% disability also supported by Ex.A.9 and Ex.B.2 and the same is confronted and the Tribunal also observed in para 14 of the award in this regard. The present certificate shows permanent disability of 65% only, even earlier compensation received for the permanent disability of 35 to 40%. Once it is the case, the additional disability is maximum 25% referred to supra.

05. Originally he is polio patient and physically challenged. It is not in dispute. He suffering with earlier injury and with mal union and there is infection from not properly attending treatment. The additional disability to be taken into consideration, leave apart he is working as teacher as can be seen from Exs.A.10 and A.11, the salary certificates for the Month of January 2005 and March 2007 respectively. It is not even his case that he was removed from employment or he was demoted from service, but for at best to say he lost future prospects. He was aged 45 to 47 on the date of accident undisputedly. Even taken of the same into consideration, what the Tribunal awarded Rs.2,96,200/- no way requires interference, but for in all heads for the meager awarded to increase Rs.23,800/-. In all the appellant entitled for an amount of Rs.3,20,000/- towards compensation.

06. Accordingly and in the result, the MACMA MP No.3222 of 2010 is allowed and the appeal is partly allowed enhancing the compensation from Rs.2,96,200/- to Rs.3,20,000/- (Rupees three lakhs twenty thousand only), however not entitled to interest from the date of petition on the enhanced compensation, but from today till realisation. No costs.

07. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dt.05.01.2016

bv

[\[1\]](#) 2002 ACJ 828