

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.1599 of 2012

AND

M.A.C.M.A.M.P.No.6350 of 2012

IN/AND

M.A.C.M.A.No.2882 of 2015

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COMMON ORDER :

The injured-claimant, who is the appellant of the unnumbered appeal supra with delay condonation application of 274 days maintained the claim petition in O.P.No.205 of 2010 under Sections 166 and 163 of the Motor Vehicles Act, 1988, for a compensation of Rs.5,00,000/- for the injuries sustained by him in the motor accident dated 19.04.2009 at about 3.45 p.m., alleging besides originally physical challenged on lower limbs, he himself and his friend

P. Satyanarayana were on the road side and while chit chatting, due to the rash and negligent driving of the Car bearing No.AP 37 AE 5555 of the 2nd respondent driven by the 1st respondent and insured with the 3rd respondent covered by Ex.B.2-policy, he sustained the injuries. The injuries sustained as per the evidence of PW.2 read with Ex.A.2-wound certificate shows Type III B open fracture with contamination of Supereandylea region of right femur with bone loss, deep laceration over right, closed head injury and long laceration over right knee joint lateral to patella. The injured produced Ex.A-4-Medical Board

Disability Certificate of 25% and other than the evidence of PW.2 showing the injured sustained the injuries of which two are grievous and other two are simple and having been admitted on 19.04.2009 and the injured was operated and discharged on 27.04.2009 and incurred the expenses covered under Ex.A.5-medical bills and there is another Ex.A.6-bill about operation issued by Venu Orthopedic Hospital with reference to Ex.A.7-medical bills also. The injured is certified as an avocation of tailor under Ex.A.8 by the Tailor's Welfare Association of Srungavruksham Village of West Godavari District. The Tribunal awarded an amount of Rs.3,50,000/- with interest at 7.5% per annum fixing joint liability against respondent Nos.1 to 3. Though it is a mistake mentioned as even only against the Insurance Company-respondent No.3, which may be rectified by this Court as the question of fastening liability on the Insurance Company to indemnify arises from the act of the driver vicariously liable by the owner of the vehicle and the liability of the insurer from the policy covers the risk under Ex.B.2 admittedly. Impugning the said quantum as utter low, the unnumbered appeal is filed by the claimant and impugning the said award also as the quantum is excessive and the Tribunal went wrong in fixing the liability on the Insurance Company, the Insurance Company maintained the other appeal.

2. Heard arguments.

3. Considering the reasons stated in the affidavit, the

delay petition is allowed. The unnumbered appeal also taken up to decide along with the other appeal of the insurer and perused the material on record.

4. In view of the rival contentions mainly regarding the quantum of compensation is excessive or utter low are concerned, leave about what is expressed above of the policy covered the risk and once the vehicle involved in the accident belongs to respondent No.2 due to rash and negligent driving of respondent No.1, Respondent No.3 jointly liable to indemnify, so the Tribunal erred in fixing liability only against respondent No.3, instead of fixing the liability against respondent Nos.1 to 3 jointly. Coming to claim of disability, originally even the claimant is a physically challenged to the lower limb and there is nothing to say any further disability after the accident and the injuries, even to give any credence to Ex.A.4. No Doctor is examined, much less any earlier disability certificate prior to the accident even of the social welfare purpose filed. PW.2, Doctor, did not depose any permanent disability sustained from the nature of injuries, much less, effecting the functional avocation on earnings as required to be proved as laid down in **Raj Kumar v. Ajay Kumar**^[1].

5. Having regard to the above, though from the nature of injuries, more particularly to the right femur, from the period of treatment and also the injured undergone treatment in two hospitals, medical expenses incurred ,

operated twice and re-admitted in the hospital of PW.2 also besides in the other hospital covered by Ex.A.6, this Court feels that the injuries including pain and sufferance for the fracture and other two grievous injuries and the other two simple injuries, which includes laceration, extra nourishment, attendant charges, transport charges, loss of earnings on the avocation and in all Rs.2,50,000/- is the just compensation, hence by reducing the compensation from Rs.3,50,000/- to Rs.2,50,000/-.

6. In the result, M.A.C.M.A.No.2882 of 2015 filed by the injured is dismissed and M.A.C.M.A.No.1599 of 2012 filed by the Insurance Company is allowed in part while reducing the compensation from Rs.3,50,000/- to Rs.2,50,000/- (Rupees two lakhs fifty thousand only) and fixing the liability jointly against respondent Nos.1 to 3 with the same rate of interest at 7.5% per annum from the date of petition till realization.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

22nd December 2015.

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[\[1\]](#) (2011) 1 SCC 343