

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.CM.A. M.P. No. 3747 OF 2012

IN / AND

M.A.C.M.A. No.2773 of 2015

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JUDGMENT:

The appellant injured claimant filed this appeal having been aggrieved by the Order/Award of the Judge, Family Court-cum-Additional District and Sessions Judge, Medak at Sanga Reddy (for short, 'Tribunal') in M.V.O.P.No.374 of 2006 dated 07.12.2010, awarding compensation of Rs.86,250/- (Rupees Eighty Six thousand two hundred fifty only) with interest at 7.5% per annum against claim of Rs.6,00,000/- (originally claimed for Rs.3 lakhs later amended to Rs.6 lakhs) fixed with joint liability 75% driver of the crime vehicle i.e., respondent No.1 and 25% on the part of the rider of the Hero Honda Motor cycle i.e., claimant, in which the petitioner not impleaded the driver of the crime vehicle to the claim petition, filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2) The 1st respondent—owner of the crime vehicle remained ex parte before the Tribunal and even dismissed for default in the appeal since impleaded, it is no way fatal to the appeal as per the decision of Division Bench of this Court in

Meka Chakra Rao vs Yelubandi Babu Rao^[1].

3) Heard and perused the material on record including the reasons assigned for the delay of 438 days in filing the appeal, and the delay is condoned.

4) A perusal of the award of the Tribunal is a well considered one on all respects showing the injured claimant suffered compound comminuted fracture on right femur and he was admitted in Durgabai Deshmukh Hospital and had undergone surgery for comminuted fracture. In the cross examination, PW.2 stated that the hospital is run by Charitable trust and did not charge for admitted on 09.06.2006 as inpatient and the fracture was fixed with plates and screws and discharged on 20.06.2006 and readmitted on 15.02.2007 and got operated on 15.02.2007 for bone grafting and thereafter was discharged on 19.02.2007. He further stated that the claimant needs to undergo one more operation in future for removal of plates and screws, which may likely to cost Rs.25,000/-. As per the evidence of PW.2, practically there is no undergoing treatment in care hospital, much less to incur the so-called medical bills covered by Ex.A4 as rightly concluded by the Tribunal. Once the evidence of PW.2 is very clear regarding the admission in their hospital and recovered and attending the normal work, there is nothing to say any disability. PW.3—incharge of billing section deposed that the bunch of medical bills vide Ex.A4 were issued by care hospital and prescriptions filed. The so called Ex.A5—disability certificate cannot be given any credence as it is not even for medico legal purpose though issued by medical board as concluded by the Tribunal for the disability sustained by the injured. Therefrom, the tribunal arrived at Rs.1,15,000/- including future operation, for the expenses already incurred,

for pain and suffering for the compound commuted fracture of right femur, of which the liability of 75% therein comes to Rs.86,250/-. Thus, it requires no interference but for as pointed out by the appellant there is nothing awarded regarding attendant charges and transport charges or extra nourishment.

5) Having regard to the above, it requires enhancement of the 75% liability of respondent Nos.1 and 2, from Rs.86,250/- to Rs.1,00,000/-.

6) Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.86,250/- (Rupees Eighty Six Thousand Two hundred Fifty only) to Rs.1,00,000/- (Rupees One Lakh only) with interest at 7.5% per annum from the date of petition till the date of realization. No order as to costs.

7) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

12.11.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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