

HONOURABLE DR.JUSTICE B.SIVA SANKARA RAO

CMA No.4014 OF 2004

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JUDGMENT:

The petitioner-claimant filed this appeal against the award dated 12.12.2002 in O.P.No.1000 of 1999 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Nizamabad, who is a police Constable, who claimed, while going on bicycle along with one Rajeshwar Goud from Minarpally to Bodhan at the cross roads the driver of the tractor bearing No.APJ-4319 coming in opposite direction with high speed on 14.04.1999 dashed the bike. As a result of which, he fell down and the tractor ran over his legs and sustained crush injuries including fracture to left hand, right leg and also multiple grievous injuries including head injury and claimed compensation of Rs.6,00,000/- by claiming 65% permanent disability in the claim maintained against the owner and insurer of the said crime vehicle covered by Ex.B.1 policy. The Tribunal allowed the claim in part by award dated 12.12.2002 granting compensation of Rs.3,20,000/- with interest at 9% per annum. Impugning the quantum as utterly low, he maintained the present appeal.

2. It is the contention of the learned counsel for the appellant in support of the grounds of appeal that Tribunal gravely erred in not considering the evidence of PW.2 Dr.L.Ramulu who issued the disability certificate and also deposed 65% permanent disability and ought to have awarded the compensation. Hence to allow the appeal.

3. Whereas, it is the contention of the learned counsel for the second respondent contesting party insurer that the compensation awarded by the Tribunal itself is exorbitant and excessive and contrary to the principles laid down by the Apex Court in **Rajkumar v Ajay Kumar** and hence to dismiss the appeal including by reducing the rate of interest but for no cross objections are required, hence, to dismiss the appeal.

4. Perused the material on record. The parties hereinafter referred to as they are arrayed before the Tribunal for the sake of convenience.

5. Now, the points that arise for consideration are:

1. Whether the quantum of compensation awarded by the Tribunal is utterly low with what rate of interest and if so with what observations?
2. To what result?

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6. POINT NO.1:

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From the evidence on record, though there is no dispute regarding the manner of accident and liability of the respondents 1 and 2 but for on the quantum and rate of interest to decide, PW.2 Dr.L.Ramulu, who is not even a Government Surgeon, there is nothing to show for his giving Ex.A.67 so-called disability certificate muchless from his evidence with reference to any X-ray latest before giving the certificate of what nature of the disability to describe as 65% permanent disability that too the Police Constable, who is in service, as a permanent employee of the State Government. There is only the testimony of the injured-claimant PW.1 and among Exs.A.1 to A.68, A.6 is the discharge summary of the Apollo hospital and Ex.A.7 outpatient card and Exs.A.4, A.5 to A.59 reports and prescriptions from the discharge summary of the Apollo hospital, leave about the other private hospitals, there is nothing to show that he suffers from permanent disability that was not properly appreciated by the Tribunal. In fact, as laid down by the Apex Court in **RajKumar** (supra) the disability to be ascertained is to the whole body and the criteria is functional disability that is required to be taken into consideration. Here, there is no evidence muchless from the employer that he was degraded in rank or scale or lost any promotional aspects. When there is no functional disability effecting his earnings to apply any multiplier method, only the fixed and consolidated sum to be awarded, including for other functional disability regarding the day to day pursuits including in future after the accident. When such is the case but for cross objections the compensation awarded itself requires to reduce.

Coming to the rate of interest as laid down by the Apex Court in **TN Transport Corporation v. Raja Priya** the rate of interest awarded of 9% per annum is excessive to reduce 7.5% per annum, from the date of appeal at least till realization, for which no cross objections are necessary. Accordingly, point No.1 is answered.

7. POINT NO.2:

In the result, the appeal is dismissed intoto by modifying the interest from 9% to 7.5% per annum from the date of appeal till the date of realization by confirming in all other respects. No order as to costs. Consequently, miscellaneous applications, if any, pending in this appeal, shall stand disposed of.

Dr.B.SIVA SANKARA RAO,J

Date: 13th February, 2015

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