*** THE HONOURABLE DR. JUSTICE B.SIVA SANKARA RAO**

+MACMA.No.376 of 2005

% Dated 30-10-2013

MACMA.No.376 of 2005

Aitipamula Kalavathi @ Kalamma.

…. Appellant

VERSUS

$ M/s. Southern Roadways Ltd., and another

… Respondents

! Counsel for Appellant: Sri M.Raja Malla Reddy

^ Counsel for Respondents: None appeared

< GIST:

> HEAD NOTE:

? CITATIONS:

1963 (2) All.E.R-432
1969 (1) All.E.R-555
2013 ACJ 1403 = (4) ALT – 35 (SC)
2009 ACJ 1298
2006 ACJ 1398
(2003) 9 SCC 606
2011 (8) Scale 240
2005 (6) SCC 236

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.376 of 2005

JUDGMENT:

The injured-claimant filed this appeal, having been aggrieved by the award/Judgment of the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (for short 'the Tribunal') in O.P.No.603 of 2002, dated 30.09.2004, awarding compensation of Rs.1,22,508/- as against the claim of Rs.1,50,000/- originally made and later amended by enhancing the claim of Rs.4,00,000/-, for enhancement of compensation as prayed for in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2. Heard Sri M.Raja Malla Reddy, learned counsel for the appellant. The 1st respondent-owner and the 2nd respondent (The United India Insurance Co. Ltd.), insurer of the crime vehicle, having been served failed to appear and contest the appeal claim. Hence taken as heard the respondent Nos.1 & 2 to decide on merits. Perused the material on record. The parties are referred as were arrayed before the Tribunal for sake of convenience.

3. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for, from nature of the injuries proved sustained, pain and sufferance there from,

treatment undergone and amount incurred for the same and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

4. Now the points that arise for consideration in the appeal are:

   1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and, if so, with what enhancement to arrive at a just compensation and with what rate of interest?

   2. To what relief?

5. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that on 27.04.2002, while the claimant by name Altipamula Kalavathi @ Kalamma, w/o. Venkateswarlu, aged about 36 years, resident of Vidyanagar, Nalgonda, along with others was travelling in an auto bearing No. AP 24 U 6661, the crime vehicle (Lorry bearing No. AET 7701), belonging to the 1st respondent and insured with the 2nd respondent covered by Ex.B1 policy, being driven by its driver in a rash and negligent manner dashed against the auto and as a result, the claimant sustained two grievous fracture injuries and three simple injuries (as per Ex.A5 - wound certificate and Exs.A6 and A7 - discharge cards), which occurrence is covered by Ex.A1- First Information Report in Cr.No.58/2002 of P.S.Nakrekal, for the offences punishable under Sections 337, 338 and 304-A IPC and Ex.A2 charge sheet. The Tribunal from the evidence of PW.1-claimant and PW.2-Dr.K.Haranath with reference to Ex.A5 Wound certificate, Exs.A6 and A7 discharge cards and Ex.A12 disability certificate issued by the Medical Board, for fracture dislocation of left hip and colles' bones and fracture right wrist, came to the conclusion that PW.1 sustained two grievous injuries and three simple injuries

and awarded Rs.5,000/- each for two grievous injuries and Rs.1,000/- each for three simple injuries. Further, though the claimant stated that she was earning Rs.3,000/- per month as a tailor, as no documentary evidence was produced in support of her contention, the Tribunal by taking the notional income of the claimant as Rs.15,000/- per annum, which works out to Rs.1,250/- per month, awarded a sum of Rs.3,750/- towards loss of wages, Rs.25,757.50 ps towards medical expenses and Rs.80,000/- towards 50% disability as assessed by PW.2 in Ex.A12 certificate and in all, an amount of Rs.1,22,508/- was awarded against respondent Nos.1 and 2 jointly.

6. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that though the permanent disability is rightly taken at 50%, which is not much in dispute, the compensation awarded is unjust, unreasonable and the Tribunal was erred in awarding such a meager amount though it was supposed to award just compensation by applying correct multiplier ‘15’ and by taking consideration of the earnings at a minimum of Rs.3,000/- per month with increase there from of future earnings.

7. Before coming to decide, what just compensation in the factual matrix of the case, it is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical

calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in **Charle red House Credit Vs Tolly**[1] remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in **Parry Vs. Cleaver**[2] observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

8. As the fractures sustained by PW.1 and 50% disability of permanent nature caused there from is proved and taken note of by the Tribunal, but for the appeal claim limited to the extent of not correctly taken the multiplicand and multiplier, this Court there from holds that the income of the claimant can reasonably be arrived at Rs.3,000/- per month and with 50% increase thereon towards future prospects, the same comes to Rs.4,500/- p.m. and the appropriate multiplier is ‘15’ as laid down in the latest expression of the Apex Court in **Rajesh v. Ranabir Singh**[3] at paragraph 11 referring to the earlier expression in **Sarla Verma v. Delhi Transport Corporation**[4]**.** Having regard to the

above, the just compensation which the claimant is entitled comes to 50% of Rs.4,500/- = Rs.2,250 x 12 x 15 = Rs.4,05,000/- and an amount of Rs.26,000/- towards medical expenses and treatment, totaling to Rs.4,31,000/-. However, it is confined to the claim of Rs.4,00,000/- following the expressions of the Apex Court in Oriental Insurance Co. Ltd. v. R.Swaminathan[5], at paragraph 5 by referring to the earlier expression in Banarsi v. Ram Phal[6] that increasing of compensation amount beyond the amount awarded by the Tribunal in the appeal filed by the insurance company does not arise and in **Ranjane Prakash vs. Divisional Manager**[7] that even from the power under Order XLI Rule 33 CPC, the appellate Court cannot grant larger or higher relief than claimed. Therefore, it can be held that the appellant is entitled the compensation of Rs.4,00,000/-. The interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law including from the expressions of the Apex Court in **TN State Road Transport Corporation Ltd.** vs. **Rajapriya**[8] and the latest **Rajesh's** case (3 supra), interest is awarded at 7 ½ % per annum by modifying and reducing the rate of interest from 9% per annum awarded by the Tribunal. Accordingly, point 1 for consideration is answered.

POINT -2:

9. In the result, the appeal is allowed as prayed for on the quantum of compensation by enhancing the same from Rs.1,22,508/- to Rs.4,00,000/- with interest at 7 ½ % per annum from the date of the claim petition till realization/deposit with notice. Respondent Nos.1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit the said amount with interest within one month from the date of petition, failing which the claimant can execute and

recover the amount. On such deposit or execution and recovery, the claimant is permitted to withdraw Rs.1,00,000/- and rest of the amount be invested in F.D in a Nationalised Bank for a period of 3 years. There is no order as to costs in the appeal.

DR. JUSTICE B.SIVA SANKARA RAO

30.10.2013
Note: L.R.copy
B/o
v v

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[1] 1963(2) All.E.R-432

[2] 1969(1)All.E.R –555

[3] 2013 ACJ 1403 = (4) ALT – 35 (SC)

[4] 2009 ACJ 1298

[5] 2006 ACJ 1398

[6] (2003) 9 SCC 606

[7] 2011 (8) Scale 240

[8] 2005 (6) SCC 236