

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.216 OF 2009

JUDGMENT:

Heard the learned counsel for the appellant/petitioner-injured and also the learned standing counsel and for the 2nd respondent-Insurer and the 1st respondent(owner of the crime lorry bearing No.AP12T-5844) remained *ex parte* before the tribunal equally in the appeal and perused the impugned award of the tribunal in O.P.No.235 of 2006 dated 15.12.2008 out of the claim by the petitioner-injured for the injuries of Rs.3,00,000/- under Section 166 of the M.V.Act on the file of the learned XII Additional Chief Judge-cum- Chairman of the Motor Accidents Claims Tribunal, awarded of Rs.55,000/- with interest at 9% p.a. and perused the material on record including the impugned award. Now in the present appeal preferred by the injured-claimant aggrieved by the award of the tribunal is that the quantum is utterly low whereas, it is the contention of the learned counsel for the Insurer that the interest awarded of 9%p.a. is highly exorbitant and excessive to reduce to 6%p.a. as laid down in **Sarla Verma v. Delhi Transport Corporation.**

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

1. *Whether the compensation awarded by the tribunal is utterly low and unjust and requires interference by this Court while sitting in appeal to enhance, if so, with what compensation and with what observations?*
2. To what result?

Point No.1:

3.The injuries sustained by the injured-claimant, as per the evidence of P.W.3 doctor who issued Ex.A.3 MLC, Ex.A.8 Discharge summaries with reference to Ex.A.6 Medical reports, are a comminuted supra conbella fracture with inter condoylar extension of the femur or right thigh with fracture of interior pool at patella and the other lacerated wound over lateral aspect of thigh. What P.W.3 stated therefrom is of no disability but for any sufferance of pain and knee sufferance. The Ex.A.11disability certificate issued by the Medical Board filed

shows 20%. In fact, there is no assessment as to the 20% is whether to the limb or to the whole body or it is a functional disability for any avocation but for saying social welfare purpose to claim some benefits.

4. Having regard to the above, there is nothing to take any permanent disability though contended in the appeal of tribunal went wrong in not taking any permanent disability from the material supra. However, the fact remains that there is comminuted fracture detailed supra and also lacerated injured thereby for the comminuted fracture a compensation of Rs.35,000/- including pain and sufferance however for the lacerated wound of Rs.5,000/-, and Rs.35,000/- towards awarded for medical expenses and treatment besides Rs.5,000/- towards extra nourishment awarded by tribunal which includes transport and attendant charges which comes to Rs.75,000/- to enhance from Rs.55,000/- reducing the rate of interest from 9%p.a. to 7.5% p.a. as per the Apex Court's latest (Three Judges Bench) expression in **Rajesh v. Rajbir Singh**. Accordingly, point No.1 is answered.

Point No.2:

5. In the result, appeal is allowed by enhancing the compensation of Rs.55,000/- to Rs.75,000/- (Rupees seventy five thousands only) by reducing interest awarded by the tribunal of 9%p.a. to 7.5% p.a. from the date of claim petition (MVOP) till realization/deposit with notice. Both the respondents are directed to deposit said amount with interest within one month from today, failing which the claimant can execute and recover. On such deposit or execution and recovery, the claimant is permitted to withdraw the same. There is no order as to costs in the appeal. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-11-2015

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