

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.2358 OF 2004

JUDGMENT:

The injured-claimant who maintained M.V.O.P.No.84 of 2002 against the owner and Insurer of the jeep bearing No.AP.04/B.7576 to which he was one of the inmate passengers for the accident dated 06.06.2001, on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-District Judge, Kadapa(*for short, 'Tribunal'*), under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the claim of Rs.1,50,000/- since awarded Rs.35,000/- with interest at 9% p.a. by its award dated 29.03.2004 fixing liability against 1st respondent-owner of the crime vehicle only, aggrieved by the same, preferred the appeal with the contentions in the grounds of appeal that the compensation awarded by the tribunal is utterly low and unjust and in disregard of the settled principles and went wrong in fixing low sum of compensation without considering permanent disability proved from the evidence of P.W.3-Doctor coupled with Ex.A.5 disability certificate. Hence, to award compensation as prayed for by setting aside the award of the tribunal. The learned counsel for the appellant reiterated the same in the course of the hearing.

2. Whereas, it is the contention of the 2nd respondent-Insurer, that the award of the tribunal holds good and for this Court while sitting in the appeal, there is nothing to interfere and also to reduce rate of interest, hence to dismiss the appeal. The appeal against 1st respondent is dismissed for default by Court's order dated 02.09.2011.

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

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

1. Whether the compensation awarded by the tribunal in O.P.No.84 of 2002 by its Award, dated 29.03.2004 is unjust and utterly low and requires interference by this Court while sitting in appeal and if so, with what compensation and with what observations?

3. To what result?

Point No.1:

5. There is no dispute on the manner of accident and sustaining of injury to right clavicle by the petitioner-claimant while traveling in the crime jeep of the 1st respondent insured with the 2nd respondent covered by Ex.B.1 policy. Ex.B.1 is the package policy that is also deposed by the employee of the Insurer as R.W.1 covers the risk of the inmates of the vehicle as per IRDA Regulations dated 16.11.2009. Thus, the Insurer also jointly liable along with the owner of the jeep to satisfy the claim of the claimant/appellant. Now coming to the quantum of compensation undisputedly, the petitioner did not examine any doctors of the government hospital, Kadapa where he had undergone treatment much less at SVRRG Hospital, Tirupati including of doctor Narendra Dev. P.W.3 who issued the so called Ex.A.5 disability certificate which shows the doctor treated the claimant admittedly. Even on perusal of the Ex.A.5 disability certificate in association with the X-ray and examined no way even disclose any functional disability to say alleged 40% permanent partial disability, thereby the tribunal right in not considering any disability for awarding compensation by adopting multiplier method.

6. Now for the fracture of the clavicle which is one of the vital part of the body and nothing to show any functional disability, what the tribunal awarded of Rs.35,000/- is utterly low for the reasons stated, Rs.20,000/- for the fracture of clavicle, Rs.15,000/- for the medical expenses including from Ex.A.4 bills and extra nourishment, Rs.5,000/- for loss of earnings and Rs.5,000/- for transport charges and attendant charges in total Rs.45,000/- is just to award towards compensation. Further, the rate of interest is reduced from 9% to 7.5% p.a. as per the expression of Apex Court in **Rajesh v. Rajbir Singh**. Accordingly, Point No.1 is answered.

POINT -3:

7. In the result, the appeal is partly allowed by modifying the award of the tribunal by enhancing the compensation awarded by the tribunal from Rs.35,000/- to Rs.45,000/- (Rupees forty five thousand only) with interest at 7½% p.a. reducing the same from 9% p.a. as awarded by the tribunal, from the date of petition (MVOP) till realization/deposit with notice. Both the respondents (owner and Insurer of the crime vehicle) are directed to deposit the amount before the tribunal within one month from the date of receipt of copy of this judgment. 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. Consequently, miscellaneous petitions, if any, pending in this

appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 06.02.2015

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