

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1468 OF 2004

JUDGMENT:

The injured-claimant in M.O.P.No.446 of 1994 filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*),on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-IV Addl.District Judge, Visakhapatnam (*for short, 'Tribunal'*), for the claim of Rs.1,00,000/- for the injuries sustained by her viz, fracture of both bones of right forearm and lost four teeth, in the accident dated 28.12.1993, caused by the two APSRTC Buses bearing Nos.AP9Z 4553 and 3368 belongs to the respondents 3 to 5 (APSRTC) from their collusion since granted Rs.32,160/- with interest at 12% p.a. by fixing joint liability against all the respondents by award dated 01.12.1997, having been aggrieved by the same, preferred this appeal with the contentions in the grounds of appeal as well as submissions during the course of hearing that the compensation awarded by the tribunal is utterly low, that the tribunal failed to consider functional disability of 30% as deposed by P.W.2-doctor with reference to Ex.A.5 disability certificate and the tribunal ought to have awarded the compensation as prayed for, hence to set aside the award and grant compensation as prayed for.

2. Whereas, it is the contention of the learned counsel for the respondents-APSRTC that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere with the award of the tribunal, hence to dismiss the appeal.

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 is unjust and utterly low and requires interference by this Court while sitting in appeal against the award, if so, with what compensation, what rate of interest and with what observations?*

2. *To what result?*

POINT-1:

5. There is no dispute as to the manner of the accident but for quantum of compensation. No doubt, as per the Ex.P.5 disability certificate issued by the P.W.2 doctor of KGH hospital, Visakhapatnam, there is no basis to say there is 30% permanent partial disability. Thus, there is nothing to consider of disability but for pain and sufferance for the injuries as he sustained fracture of both bones of right forearm, it is just as on the date of accident i.e. 28.12.1993 to award Rs.20,000/-, for the loss of 4 teeth of Rs.5,000/- each a minimum of Rs.20,000/-, and Rs.5,000/- towards medical expenses, pain and sufferance, loss of earnings, transport and attendant charges in all Rs.45,000/-, however, by reducing rate of interest from 12% to 7.5% p.a.as per the settled expressions of Apex Court in **TN Transport Corporation v. Raja Priya**, and **Rajesh** (supra), in which it is held that there is steep fall in the bank interest rate for the past several years which is to be kept in mind while awarding interest and awarded therefrom at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in **DDA Vs. Joginder S. Monga**. Accordingly, Point No.1 is answered.

POINT No-2:

6. In the result, the appeal is partly allowed by enhancing the compensation from Rs.32,160/- to Rs.45,000/- by reducing the rate of interest from 12% to 7.5% p.a. from date of the claim petition till realization/deposit with notice. The respondents are directed to deposit the amount, within one month from the date of receipt of judgment. 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. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.04.2015

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