

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.CM.A. M.P. No. 2378 OF 2011

IN / AND

M.A.C.M.A. No.2714 of 2015

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JUDGMENT:

The claimant filed this appeal having been aggrieved by the Order/Award of the Motor Accidents Claims Tribunal-cum-I additional District Court, East Godavari District at Rajahmundry (for short, 'Tribunal') in O.P.No.61 of 2008 dated 10.01.2011, awarding compensation of Rs.1,19,361/-(Rupees One lakh nineteen thousand three hundred sixty one only) with interest at 7.5% per annum against claim of Rs.3,00,000/-(Rupees three lakhs only) claimed in the claim petition filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2. The appellant herein also filed an application M.A.C.M.A.M.P. No.2378 of 2011 to condone the delay of 37 days in filing the appeal against the order dated 10.01.2011 and this Court ordered notice to respondents in appeal and in delay application to the respondents 1 and is unserved and 3rd respondent—insurer put forth his appearance through counsel and contested but for appeal dismissed against respondents 1 and 2 for not taking fresh notice for earlier notice unserved in dismissal. It is the submission referring to the award, respondents 1 and 2 remained ex parte before the Tribunal and impleaded even dismissed for default, is no way fatal to the maintainability of the appeal vide ***Meka Chakra Rao vs Yelubandi Babu Rao*** ^[1] and while recording the

same, the delay of 37 days in filing the appeal, is condoned.

3. At request of both parties, the matter is taken up for hearing. Heard and perused the material on record.

4. A perusal of the evidence of PW.2— Dr.T.S.R.Murthy, Civil Assistant Surgeon working in Government General Hospital, Kakinada with reference to Exs.X1 and X2 speaks there are three fractures one is compound fracture of patella (left side), fracture medial condyle left femur and for that he was operated on 13.09.2005 for fracture of patella and on 04.10.2015 for fracture of both bones of forearm, there were implants in left forearm and patella removed and that he was discharged on 08.10.2015, he stated that the injuries are grievous in nature. There is nothing to show much less to believe the so-called treatment in Raju Neuro Hospital, Rajahmundry subsequently with reference to Exs.A7 to A10 and also filed Ex.A6 showing that the petitioner sustained 40% permanent disability by the claimant as PW.1. In his evidence from Ex.A5 the so-called disability certificate issued by Medical Board, District Hospital, Rajahmundry does not show practically by the Medical Board, undisputedly after first-aid he joined in Government Hospital, Kakinada, the Doctor who treated deposed as PW.2 did not speak any permanent disability of any nature even he sustained three fractures.

5. Having regard to the above, there is no disability that can be taken into consideration as rightly concluded by the Tribunal. Now coming to the quantum of compensation

awarded by the Tribunal is utterly low in analyzing the facts referred supra for the compound fracture of both bones Rs.25,000/-, compound fracture of patella Rs.25,000/- and Rs.25,000/- towards fracture medial condyle left femur, it comes to Rs.75,000/-. Apart from it, Rs.8,000/- awarded towards loss of earnings and Rs.42,000/- towards attendant charges, transport charges and extra nourishment, in all the appellant is entitled to Rs.1,25,000/-.

6. Accordingly the appeal is partly allowed enhancing the compensation from Rs.1,19,361/- (Rupees one lakh nineteen thousand three hundred and sixty one only) to Rs.1,25,000/- (Rupees One lakh twenty five thousand only) with interest at 7.5% per annum from the date of petition till the date of realisation. No order as to costs.

7. Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

05.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.CM.A. M.P. No. 2378 OF 2011
IN / AND
M.A.C.M.A. (SR) No.20175 of 2011

Date: 05.11.2015

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