

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2723 of 2015

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JUDGMENT :

The claimant filed this appeal impugning the award of the learned Chairman Accidents Claims Tribunal-cum-Additional Chief Judge, City Civil Court, Secunderabad (for short, the Tribunal) in M.V.O.P.No.72 of 2008 dated 31.03.2011 claiming under Section 166 of the Motor Vehicles Act, 1988, (for short, 'the Act') for granting only Rs.1,12,500/- with interest at 7.5% per annum out of claim of Rs.2,50,000/- as utterly low.

2. It is submitted by the learned counsel for APSRTC as well as the Insurer that the amount awarded by the Tribunal is just and no way requires interference by this Court while sitting in appeal.

3. A perusal of the material shows that the age of the injured-claimant is shown as 65 years in Ex.A.6-Disability Certificate and assessed the disability at 50% by the Medical Board. The accident was occurred 29.06.2007 and the injured was treated in Gandhi Hospital, Hyderabad, and there was amputation of the right leg below knee. As per Workmen Compensation Act, 1973, Schedule-I, Part-II, Item 21, empowers below knee with stump not exceeding 12.70 cm in length also speaks the permanent disability of 50%.

4. Coming to the age of the claimant, she relied on

Ex.A-7-Medical Certificate issued by the Doctor. But, the same is not admittedly supported from the so-called affidavit of the party with reference to Aadar card or ration card or photo identity card as they were not filed before the Court. The charge sheet and F.I.R. shows, the age 51 is not even correct when Ex.A.7 speaks within 65 years, therefore, the Court feels that the age of the claimant would be 61 to 65 by adopting the multiplier '7' instead of '5' taken by the Tribunal.

5. Now coming to the earnings, it is the claim of claimant that she is earning Rs.3,000/- per month prior to the accident, whereas the Tribunal has taken the an amount of Rs.15,000/- per annum. As per **Latha Wadwa and others v. State of Bihar and others**^[1], in the absence of proof of earnings, minimum Rs.3,000/- to be taken. Taken into consideration the above expression, the income of the injured is Rs.3,000/- per month and the multiplier '7' to be adopted, it comes to Rs.2,52,000/- (Rs.3,000/-x12x7). Apart from that, the claimant is entitled to medical expenses of Rs.21,000/- as per Ex.A.5 and Rs.4,000/- transport and attendant charges, in all it comes to Rs.2,77,000/-, which is the just compensation. It is needless to say, as per the expression in the Full Bench judgment of this Court in **APSRTC, Hyderabad v. B. Kanaratnabai**^[2], the Apex Court's expression in **Uttar Pradesh State Road Transport Corporation v.**

Kulsum^[3] and also judgment of this Court in M.A.C.M.A.No.3299 of 2011 dated 29.10.2014, the APSRTC cannot be made personally liable, but for the Insurance Company covers the risk in indemnifying the owner and hirer of APSRTC for non intimation of hiring to APSRTC by insured to the insurer not covered by Section 157 of the Act to escape liability by the insurer.

6. Having regard to the above, the respondents are jointly liable to pay the amount to the claimant. Accordingly, the appeal is allowed by enhancing the compensation from Rs.1,12,500/- to Rs.2,77,000/-.

7. Even though the claim is for Rs.2,50,000/- including in the appeal, once the claimant is entitled to Rs.2,77,000/-, which is just compensation from the calculations arrived supra as laid down three bench judgment in **Rajesh vs. Rajbir Singh**^[4], the claimant is entitled to the said amount subject to payment of deposit of court fee for Rs.27,000/- before the Tribunal within two months from the date of receipt of the judgment. Without payment of the court fee, the claimant is not entitled for execution the award of the appeal. It is needless to say, the interest liability of respondents on the enhanced amount is only from 05.11.2015 i.e., the date of appeal ordered to be numbered by condonation of filing delay in M.A.C.M.A.M.P.No.426 of 2011, allowed on 05.11.2015.

8. Miscellaneous petitions pending, if any, shall stand

closed.

Dr. B. SIVA SANKARA RAO, J

5th November 2015

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[\[1\]](#) AIR 2001 SC 3218
[\[2\]](#) 2013 (1) ALD 644 (DB)
[\[3\]](#) (2011) 8 SCC 142
[\[4\]](#) 2013 ACJ 1403 = (4) ALT 35 (SC)