

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
MACMA MP No.383 of 2009 in MACMA No.2778 of
2015 & MACMA No.2778 of 2015

COMMON ORDER :

Heard the learned counsel for the appellant-claimant vis-à-vis the 2nd respondent insurance company represented by Sri Naresh Byrapaneni, Advocate, that the respondent No.1, the owner of the lorry bearing No.AP 10 T 6853 remained exparte before the Tribunal and even impleaded in the appeal dismissed for default on 01.12.2011 no way fatal to the appeal.

2) The appeal is filed along with a petition in MACMA MP No.383 of 2009 seeking to condone the delay of 54 days in filing the appeal. The reasons assigned for said delay is due to financial and other problems and taken into consideration of the same, delay condoned subject to condition of not entitled to interest on the enhanced amount till date.

3) At request of both sides the appeal is taken up for final disposal, for 1st respondent not a necessary party to the appeal as referred supra. The contentions in the grounds of appeal are that the Tribunal erred in awarding compensation of Rs.20,000/- for the pain and suffering despite P.W-2 Doctor deposed about his examination of the injured in 2007, of the accident dated 18.10.2004 nearly three years later to the accident and stated there is

25% partial permanent disability from the original injury sustained is a crush injury. In fact, the discharge summary of the Care Hospital no way shows any disability of permanent nature, particularly from Ex.A-5 if any also from Ex.A-3 M.L.C and Ex.A-4 medical certificate. P.W-2 is not, admittedly, the doctor who treated and no doctor who treated him was examined as rightly observed by the Tribunal in para No.13 of the Award. Further, the fact remains there is a crush injury with fracture of left foot. The claimant is a private employee in J.V.K.Novapan Company, Balanagar and the Tribunal rightly observed that there is nothing to show he was removed from services for any disability to attend the duties and what the disability is not on the earnings only functional disability from the said observation of the Tribunal which is only by the expression of the Apex Court though not referred i.e., ***Raj Kumar V. Ajay Kumar***^[1].

4) No doubt, the medical bill covered by Ex.A-9 shows said claim incurred through his evidence Rs.87,766/-. The discharge bill of the Care Hospital was Rs.86,866/-. There is another discharge bill receipt for Rs.600/- dated 06.11.2004, the Tribunal ignored the same and taken only Rs.50,000/- towards medical expenses and extra nourishment besides extra nourishment Rs.29,000/-. For the injuries sustained including for the loss of earnings, Tribunal arrived Rs.49,000/- besides that

for extra nourishment for Rs.20,000/- by taking consideration of all these facts as medical expenses incurred shows from the above including from the Care Hospital, discharge bill of Rs.86,866/-, it is just to award Rs.90,000/- apart from Rs.20,000/- towards extra nourishment, transport charges and attendant charges and Rs.50,000/- towards the crush injury including to the fracture to the left foot, pain and sufferance and for loss of earnings. In all it comes to Rs.1,60,000/- is the just compensation to award to the claimant.

5) In the result, the appeal is partly allowed enhancing the compensation from Rs.1,20,000/- to Rs.1,60,000/-. However, the rate of interest on the enhanced amount shall be from today till the date of realization. The Award of the Tribunal in all respects holds good. There shall be no order as to costs.

6) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

11.12.2015

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