

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.2658 OF 2015

JUDGMENT:

The injured-claimant aged about 31 years preferred this unnumbered appeal aggrieved by the award dated 22.07.2010 passed by the learned District Judge, Vizianagaram-the Motor Accidents Claims Tribunal, in M.O.P.No.253 of 2004 filed under Section 163-A of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the claim of Rs.1,50,000/- for sustaining injuries in the accident dated 21.02.2004 caused by the driver of the crime auto bearing No.AP 35 T 7956, after contest the Court below since granted Rs.30,000/- with interest at 6% p.a. fixing joint liability on both the respondents(Owner and Insurer of the crime Auto with the contentions in the grounds of appeal that the quantum of compensation is utterly low and the tribunal failed to grant amount for disability, hence, the compensation may be granted as prayed for.

2. The claimant along with the unnumbered appeal filed a petition vide MACMAMP No.1423 of 2011 seeking to condone the delay of 156 days in preferring the appeal and on perusing the reasons assigned, the petition is allowed condoning the delay, directing the registry to number the appeal if it is otherwise in order and at request of both the counsel taken up the appeal for hearing.

3. Heard the learned counsel for the claimant and the 1st respondent-owner of the crime auto remained *exparte* before the tribunal even impleaded in the appeal and even substitute service ordered for original notice not served, failed to attend taken as heard and also heard the Insurer.

4. As per the evidence of P.W.1 doctor and the injured P.W.1 with reference to Ex.A.5 X-ray in which there is a fracture found and issued Ex.A.2 wound certificate which speaks pain and swelling over left hip and undergone treatment in Sai Orthopedic Hospital, Vizianagram and

are not shown any injury over there but in subsequent examination by the P.W.2 he found basing on latest clinical examination that there is old fracture of PVVLC and bone mal-union. Though the P.W.2 speaks as if there is 10% disability but there is no basis for that to rely as rightly concluded by the tribunal and for this Court while sitting in appeal also there is nothing to interfere for the person who issued wound certificate not even examined much less the original x-ray not shown any said injury even taken the same as a fracture sustained outcome of the accident. This Court opines that even Rs.25,000/- for the injury and Rs.15,000/- towards medical expenses, loss of estate, transport charges and attendant charges in all granted is just. Hence, from the factual matrix the amount from Rs.30,000/- to Rs.40,000/- in all is enhanced with interest at 7.5% p.a. as per the latest expression in

Rajesh v. Rajbir Singh [1]

5. In the result, the appeal is partly allowed by enhancing the compensation from Rs.30,000/- granted by the tribunal to Rs.40,000/- with interest at 7.5% p.a. Rest of the terms of the award holds good. There is no order as to costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.11.2015

Vvr

[1] 2013 ACJ 1403=(4)ALT-35(SC).