

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.5056 of 2009 in MACMA No.2898 of 2015
& MACMA No. 2898 of 2015

COMMON ORDER :

The injured-claimant, in O.P. No.954 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal –cum- VIII Additional District Judge, Nizamabad, maintained under Section 166 of the Motor Vehicles Act for Rs.7,00,000/- for the injuries sustained in the motor accident dated 31.03.2003 for the alleged rash and negligent driving of the tanker bearing No.AP 31 U 4556 of the 1st respondent insured with the 2nd respondent under Ex.B-1 policy from the Tribunal after evidence on record of the claimant and tried as P.Ws 1 and 2 with reference to Exs.A-1 and A-19 and Exs.C-1 and C-2 awarded compensation of Rs.2,11,460/- with interest at 7.5% p.a. vide award dated 22.09.2008 in O.P. No.954 of 2003 preferred the appeal with contentions in the grounds of appeal that the Tribunal ought to have been taken the monthly income as Rs.10,000/- per month as evidence on record he worked as Manager and maintaining accounts in a rice mill and what the Tribunal taken of Rs.3,500/- per month is utterly low and with no basis and the disability deposed by P.W-2 when clearly speaks 30 to 40%, the Tribunal went wrong in taking 14% and thereby that also requires to be enhanced and sought for allowing the claim as prayed for with other contentions of

the medical expenses not properly considered was also for other several summons which requires enhancement.

2) The appeal is filed with delay of 164 days. The 2nd respondent is the insurance company representing Sri K.Subba Rao Advocate on the other hand contended that but for no cross objections what the award of the Tribunal, compensation itself is excessive and exorbitant for no disability more than 14% as observed by the Tribunal in the award at page No.11, para No.10 sub para No.vii and thereby sought for dismissal also by saying there are no grounds to condone the abnormal delay even.

3) Heard both sides and perused the material on record. Reasons assigned for the delay in filing the appeal is that due to poverty the appeal could not be filed in time. Hence delay is condoned subject to condition that the claimant is entitled the interest on the enhanced amount, if any, from today only. At request of both sides the appeal is taken up for hearing.

4) From the evidence on record of P.Ws 1 and 2 with reference to Exs.A-1 to A-19 and Exs.C-1 and C-2 so far as the medical bills and receipts concerned, the Tribunal scanned the evidence particularly from Exs.A-5 to A-11 and Ex.A-15, C-1 and P.W-2 evidence and came to the conclusion in awarding Rs.75,000/- towards medical expenses which no way requires interference either to enhance or to reduce. Coming to the permanent disability,

as rightly concluded by the Tribunal, as per Schedule I, para II, item 40 of the Workmen's Compensation Act, 1923 for removal of the great toe amputation of great toe, the disability is 14%. So far as the other injuries concerned, in the evidence of P.W-2 particularly as discussed by the Tribunal for the award page No.6, para No.10 clause (i) what P.W-2 deposed is it requires three months get normalcy thereby what P.W-1 stated of 30% to 40% disability for nothing even from Ex.C-2 discharge summary cannot be given appreciation so far as that disability from the fractured injuries concerned, but for the injury No.3 results amputation of right great toe. Thus, it is just to take the permanent disability to a maximum of 15%. In all respects, if that is taken consideration, the age of the injured as on the date of accident 22 years and the multiplier that is applicable is 18 and not 17 taken by the Tribunal. Thus, as taken the earnings of the injured at Rs.3,500/- p.a. which no way requires enhancement, even from the expression of the apex Court in the absence of proof of earnings as a guidance of **Latha Wadhwa vs. State of Bihar**^[1] of Rs.3,000/- minimum to take, then it comes to (Rs.3,500 x 15 x 12 x 18) 1,13,400/-, apart from it a sum of Rs.75,000/- towards medical expenses awarded by the Tribunal, it comes to Rs.1,88,400/- and even from the evidence, to heal the injuries even taken the loss of earnings of Rs.10,500/- being added to it, apart from transport charges though claimed of Rs.15,500/- under Ex.A-13 what the Tribunal

allowed Rs.5,000/- for several times traveled from Armoor to Hyderabad and the extra nourishment even taken as Rs.10,000/-, attendant charges Rs.5,000/-, it all comes to Rs.2,14,500/- rounded to Rs.2,15,000/-.

5) In the result, the appeal is partly allowed enhancing compensation from Rs.2,11,460/- to Rs.2,15,000/- with interest on the enhanced amount from today by upholding the other aspects. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

31.12.2015

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[\[1\]](#) (2001) 8 SCC 197=AIR 2001 (SC) 3218