

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.711 OF 2008

JUDGMENT:

The injured claimant of O.P.No.2754 of 2005 maintained the claim under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-III Additional Chief Judge, City Civil Court, Hyderabad, (*for short, 'Tribunal'*) against the owner, Insurer of the Eicher van bearing No.AP03 V 3036 31 Y 1234 and owner and Insurer of the AMC Tours and Travels bus bearing No.AP 31Y 1234 for a claim of Rs.10,00,000/-, for the injuries sustained in the motor accident dated 27.06.2005 while he was traveling in the bus of the 3rd respondent caused by the opposite coming van belongs to the 1st respondent insured with the 2nd respondent in the manner of head on collision, considering the evidence on record from the amputation of the right arm near to the shoulder certified by P.W.2 doctor G.Kamaraju, orthopedic surgeon of Kamineni Hospitals, including from his evidence and referring to Ex.A.7 disability certificate issued by him of there is 70% permanent disability, the tribunal awarded from his age of 37 years as per the PAN card under Ex.A.6 which shown date of birth as 02.08.1968, estimated his earnings at Rs.5,000/- per month from no basis to believe the evidence of P.W.4-the employer of the claimant, as he was paying a salary of Rs.10,000/- p.m. to the claimant as Welder by profession, by granting compensation of Rs.7,49,680/- with interest at 7.5%p.a. by award dated 12.09.2007 with joint liability.

2. Impugning the same, the Injured claimant maintained the present appeal with the contentions in the grounds of appeal vis a vis during course of hearing by placing reliance on three expressions of the

Apex Court, one in Sanjay Kumar Vs. Ashok Kumar¹ where for an injured with 70% functional disability from taking the monthly earnings at Rs.4,500/- p.m. from his age adopting multiplier 18 which include for loss of marriage prospects of Rs.75000/- awarded of Rs.1,50,000/- and for pain and sufferance and mental agony from the amputation with 50% future prospects from the nature of avocation and costs of litigation before the Supreme Court of Rs.25,000/- and loss of amenities of Rs.1,00,000/- in all it was awarded of Rs.14,59,100/- with interest at 9%p.a. The second one relied by the counsel is the expression in G.Ravindranath and E.Srinivas² where the compensation awarded is of Rs.20,20,000/- from the Urethra fracture and grievous injuries in pelvic region and total rupture of urethra resulting in impotence and suffered from erectile dysfunction of the person aged hardly 19 years and underwent prolonged treatment and multiple surgeries that resulted even to discontinue his education and has become unfit for marital life and the third decision placed reliance is in Kavita Vs. Deepak³ where it was awarded a compensation of Rs.34,37,747/- with interest at 7.5% p.a, for the victim aged nearly 30 years working as a partner of a firm by estimating the income and prospective earnings and by considering the total medical expenses of the prolonged treatment and the bills produced. in the present case, he sought for allowing the claim as prayed for and even to grant more than claimed if the injured actually entitles for which he is ready to pay deficit Court fee under Rule 475 of the M.V.Rules.

3. Whereas, it is the submission of the learned counsel for the 2nd and 4th respondents, the Insurers of both the vehicles, against whom of

¹ 2014(5) SCC 330

² 2013 ACJ 2131

³ 2012(6) ALD 131(SC)

each 50% liability is fixed by the tribunal to indemnify the respective owners that the award of the tribunal holds good for this Court while sitting in appeal but for no cross-objections, there is nothing to enhance but for to reduce and thereby sought for dismissal of the appeal.

4. Heard and perused the material on record.

5. The tribunal rightly taken from the evidence of P.W.2 on record with reference to Ex.A.7 certificate 70% permanent disability. So far as the earnings of the injured, the tribunal rightly arrived at Rs.5,000/- p.m. for no proof regarding income and even from the contention of respondents particularly by R.2 by cross-examination of P.W.1 from the pan card Ex.A.6 injured was doing business and not a welder much less got salary under P.W.4 of Rs.10,000/- p.m. Even taken the same for a businessman also, the prospective earnings can be taken into consideration as laid down by the Apex Court in *Sarla Varma v. Delhi Transport Corporation*⁴ extended even to those self-employed by the three judge Bench expression in *Rajesh Vs. Rajbir Singh*⁵ and thereby from his age about 37 years the prospective earnings can be taken of 50% it comes to Rs.5,000/- p.m. $\times 12 \times 15 \times 70 / 100 = \text{Rs.} 6,30,000/- + 50\%$ future prospects = Rs.9,45,000/-. So far as the other heads concerned, the tribunal rightly granted compensation of Rs.75,000/- for artificial limb. One among the three expressions placed reliance by the learned counsel for the appellant, it is shown that some other amounts granted therein however there are no bills or evidence produced much less for any artificial limb if purchased and it incurred more than that even to consider. So far as the medical expenses concerned, considering the evidence of P.W.2 and from the bills and prescriptions produced and

⁴ 2009 ACJ 1298

⁵ (2013) ACJ 1403=(2013) 9 SCC 54,

proved, the tribunal rightly granted Rs.50,000/- . So far as the pain and sufferance concerned in the three expressions, it is awarded nearly Rs.1,00,000/- or Rs.1,50,000/- and the tribunal awarded herein is Rs.20,000/- . In fact, the amputation is immediately in the present case, but in some of the cases placed reliance supra it was after prolonged treatment and the injured underwent therein several surgeries and thereafter only there was amputation. Hence, each case depends upon respective facts but for to add Rs.10,000/- to make it Rs.30,000/- from Rs.20,000/- under the head. Regarding loss of amenities, once it is considered of 70% permanent disability that is also with future prospective earnings since awarding no further amount can be awarded therefrom and in the present case he is not unmarried person for awarding any amount for loss of marriage prospects to place reliance on any expression in this regard. Thus, besides Rs.9,45,000/- supra, the amount of Rs.75,000/- towards artificial limb, Rs.50,000/- towards medical expenses, Rs.30,000/- arrived towards pain and sufferance and mental agony, Rs.10,000/- towards loss of amenities and Rs.5,000/- towards loss of earnings by taking one month period of treatment from the evidence of P.W.2 as the injured discharged after 9 days having been admitted on 28.06.2005 and discharged on 17.07.2005, which comes to Rs.11,15,000/- is the just compensation for which the claimant is entitled. Hence, the compensation awarded by the tribunal of Rs.7,49,680/- is to be enhanced to Rs.11,15,000/- by confirming the rate of interest at 7.5%p.a. awarded by the tribunal. It is submitted by the learned counsel for the claimant that the rate of interest may be enhanced to 9%p.a. but as per the latest three judge Bench expression in Rajesh supra and from the settled proposition of law including from TN State Corporation Limited v. S.Rajapriya⁶ considering the steep fall in

⁶ 2005(6) SCC 236.

the bank lending rates, the rate of interest is granted at 7.5%p.a. only and same is since just no way requires to enhance.

6. Accordingly and in the result, the appeal is allowed by enhancing the compensation from Rs.7,49,680/- to Rs.11,25,000/- (Rupees eleven lakhs twenty five thousand only) by confirming the rate of interest at 7.5% p.a. awarded by the tribunal from the date of petition till realization. The respondents are directed to deposit the enhanced amount within one month from the date of this order. Only on payment of deficit Court Fee before the tribunal under Rule 475 of the A.P M.V Rules,1989 on Rs.1,25,000/-, the claimant is permitted to withdraw the same. Rest of the award holds good. There is no order as to costs in the appeal. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 22.09.2016
Vvr

