

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4338 of 2008

JUDGMENT :

The injured-claimant, who maintained O.P.No.99 of 2005 on the file of II-Additional District Judge, Nalongda at Suryapet (for short, 'the Tribunal'), under Section 166 of M.V.Act., for a compensation of Rs.2,50,000/- against the owner and insurer of lorry bearing No.GJ 3 U 5945, since awarded by the Tribunal of Rs.2,19,500/- with interest at 7.5% per annum, maintained the present appeal.

2. The contentions in the grounds of appeal are that the Tribunal ought to have considered the permanent disability spoken by PW.3 of 60% and ought not to have refused to grant arrived therefrom apart from the earnings estimated is not correct and it should have awarded a just and reasonable compensation and the amounts not properly appreciated as there is no restriction, thereby to allow a just compensation as claimed in the appeal for Rs.4,00,000/-.

3. Whereas, it is the contention of learned counsel for the 2nd respondent-insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere. Hence, to dismiss the appeal.

4. Heard and perused the material on record.

5. Today, the appellant/claimant is present as directed by this Court and it is noticed by the Court also of limping from the malunion of the fractures according to him.

6. Coming to the factual matrix, the accident was occurred on 21.04.2001 morning while the injured/claimant along with two other persons including one Latchaiah, since died, were proceeding in the auto, the lorry of the 1st respondent driven by its driver in a rash and negligent manner coming opposite direction dashed the auto, as a result, Latchaiah died and the claimant sustained injuries and he was earning minimum Rs.4,000/- per month from business and agriculture.

7. It is the contest of the 2nd respondent-insurer in disputing the manner of accident and any negligence of the lorry driver, but for negligence of the driver of the auto, in which the claimant was travelling and there is violation of conditions of policy and the Tribunal having heard from the evidence of PWs.1 to 3 i.e., injured as PW.1, Doctor of Osmania General Hospital, Hyderabad as PW.2 and a private Doctor as PW.3 and with reference to Exs.A.1 to A.21 and Ex.B.1-policy, awarded compensation supra of Rs.2,19,500/-.

8. From the perusal on record, the age of the injured is about 25-26 years, the Tribunal taken the multiplier '17' and also estimated the earnings of the injured is at Rs.3,000/- per month. There is no evidence as to what was the business he was doing and how it is impaired, if any business concerned, what all the loss there is only a professional loss. The evidence of PW.2, who is Doctor in O.G.H.

and who treated the injured, is that he conducted operations initially for the left leg both bones fractures on 08.05.2001 and again for the right leg fracture on 03.08.2001 and there is malunion of fracture of left femur and knee region and he is feeling difficulty in walking long distances and also difficulty of standing long hours. PW.2 did not depose anything about permanent disability, but for PW.3 deposed of 60% permanent disability and that is taken into consideration by the Tribunal. As the accident was dated 24.01.2001, what the Tribunal assessed the earnings of the injured at Rs.3,000/-, no way requires interference and also in taking 60% permanent disability and in adopting multiplier '17', therefrom in fact the amount arrived is Rs.3,67,200/- (Rs.1,800 x 12 x 17). Apart from it, what the Tribunal awarded is Rs.6,000/- towards transport charges and attendant charges, Rs.35,500/- towards medical expenses, which requires to be included and what the Tribunal awarded towards pain and sufferance is Rs.13,000/-, which required to be enhanced to Rs.30,000/-, apart from it, the claimant is entitled to Rs.6,300/- towards loss of earnings, in all it comes to Rs.4,45,000/-, which is just compensation.

9. Accordingly, the appeal is allowed by enhancing the compensation from Rs.2,19,500/- to Rs.4,45,000/-, however, subject to payment of deficit court fee on over and above Rs.2,19,500/-. If the deficit court fee is not paid as per 475 of M.V.Rules before the Tribunal, the claimant cannot be permitted to execute for the

enhanced claim amount. Rest of the terms of the award of the Tribunal holds good.

10. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

26th September 2016

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Dr. B. SIVA SANKARA RAO, J

