HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.M.P.No. 5538 of 2010

in/and

M.A.C.M.A.No. 286 of 2016

JUDGMENT :

The injured claimant of O.P.No.619 of 2006 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge at Eluru, West Godavari District (for short 'the Tribunal'), maintained claim for Rs.2,00,000/- against three respondents, driver, owner and insurer of lorry bearing No.AP 37U 3789, under Section 166 of the M.V. Act, and since the award is of Rs.84,000/- by the Tribunal with interest at 7.5% p.a. against the respondents 1 and 2 by exonerating the 3rd respondent insurer from the factum of Ex.B.2 driving licence of the 1st respondent by the date of the accident expired with no renewal, vide judgment dated 12.10.2009, the claimant maintained the appeal with contentions in the grounds that the Tribunal grossly erred in exonerating the insurer from the liability and the quantum of compensation awarded is utterly low, with a delay condonation petition.

2. The respondents 2 and 3 owner and insurer of the crime vehicle even served failed to attend. The 1st respondent driver, who remained ex parte before the Tribunal, was even impleaded in the appeal, the appeal was dismissed for default against him, which is no way fatal. Heard and the delay is condoned subject to the condition of not entitling the claimant to interest on any enhanced compensation till date.

3. Coming to the entitlement of compensation awarded by the Tribunal of Rs.84,000/-, though P.W.3 deposed as if there is 40% permanent disability from the amputation of left great toe at metatarsal besides a fracture to 2nd toe of left leg, as per item No.24 of Schedule I of the Workmen's Compensation Act, 1923, for loss of all toes of one foot through the metatarso phalangeal joint, the disability is only 20% and as per item No.39 of Schedule I of the said Act, for loss of toes of right or left foot great toe through metatarso phalangeal joint, the disability is 14%. The injured claimant is aged 35 years as per the claim petition. The case of the claimant is that he was the cleaner of the lorry and earning Rs.3,500/- p.m. as on the

date of the accident dated 30.12.2005 including batta. Even as per ***Latha Wadhwa vs. State of Bihar*** even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution. Therefore, if taken the income of the claimant as Rs.3,500/- p.m., 14% thereon comes to Rs.88,200/- (Rs.490/- p.m. x 12 months x "15" the multiplier applicable for a person aged between 36 and 40) for permanent disability of removal of great toe of left leg, Rs.20,000/- for fracture to 2nd toe of left leg, Rs.20,000/- towards medical expenses as deposed by P.W.2 and Rs.10,000/- for extra nourishment, loss of earnings, attendant and transport charges, totaling to Rs.1,38,200/-, which is rounded off to Rs.1,38,000/-, which is the just compensation to award.

4. So far as the exoneration of the 3rd respondent insurer from the liability is concerned, even from the evidence of R.W.1 employee of the insurer with reference to Exs.B.1 and B.2, Ex.B.1 policy is in force covering the risk of the third party. However, the driving licence of the 1st respondent shown expired with no renewal. There is nothing to show that the owner deliberately allowed the driver of the crime vehicle to drive the vehicle without licence and as such it is not a case for exoneration of the insurer from the liability but for pay and recovery once the policy covered the risk vide decisions in ***National Insurance Company Limited Vs. Swaran Singh & Others, Kusumlatha and others V. Satbir and Others and S.Iyyappan Vs. United India Insurance Company.***

5. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.84,000/- to Rs.1,38,000/- with liability of the 3rd respondent insurer to pay and recover from the respondents 1 and 2 and with interest at 7.5% p.a. on the enhanced compensation from today till realization. The respondents shall deposit the said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to the claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal

shall not withhold the amount of the claimant, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

Consequently, miscellaneous petitions, if any pending in this appeal shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

21st January, 2016

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