HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.577 of 2010

JUDGMENT:

The injured claimant aged about 30 years as on the date of accident maintained the claim against the owner and insurer of car bearing No.AP-37-T-7457 for a compensation of Rs.10,00,000/- under Section 166 of MV Act and from the contest by the 2nd respondent insurer from the 1st respondent remained exparte before the Tribunal, what the Tribunal awarded of Rs.4,16,000/- with interest @ 7.5% per annum impugning as utterly low vide award dated 24.04.2008 in O.P.No.1500 of 2003 maintained the appeal.

Heard learned counsel for the claimant and learned counsel for the insurer and perused the material on record.

Even the disability certificate issued by PW.2-Dr. C.Kamaraju, Orthopedic Surgeon, Kamineni Super Specialty Hospital under Ex.A14 shows by the time of November 2004 his age is about 31 years, he claimed as 30 years, he does not show any proof like SSC certificate as on the date of accident and the multiplier that is applicable as per **Sarla Verma v Delhi Transport Corporation**[1] up to 30 years '17' and above 31 years '16' and thus '16.5' is the just multiplier to adopt.

Now coming to the earnings of the injured claimant as per the Ex.A15-Bar Council Enrolment, he enrolled as advocate in 1998 August and by the time of accident dated 16.08.2003, he put up more than 5 years professional carrier and Exs.A17 are the 3 dairies of the year 2001 to 2003 showing he attended several cases

[1] 2009 ACJ 1298.

by filing vakalaths to show he got some work. No doubt there are income tax returns-Ex.A16 allegedly of the previous years 2005 and no sanctity to be attached to it to take income mentioned therein. No doubt in the very petition averments either rightly or wrongly it is mentioned in column No.6 that his monthly income is Rs.2,000/- per month but nothing written in words. What is laid down by the Supreme Court 3 Judge Bench in **Smt. Rukhmabai Vs. Lala Laxminarayan**[2] that the context in which a fact mentioned to be construed to consider the same as admission or not. Here, it is explained in the evidence saying he is getting income more than that. Thus the trial Court went wrong in considering the stray sentence as if it is an admission.

Having regard to the above, it is the duty of the Court from the evidence on record by some guess work in arriving as to what is the income of the injured. Thus, the only guidance in the absence of proof of the earnings is from the expression of the Apex Court in **Latha Wadhwa vs. State of Bihar**[3] and where it said even the domestic contribution of house wife taken minimum of Rs.3,000/- per month. Once such is the case, the claimant injured is advocate by profession and by the time of accident he put up minimum 5 years professional carrier, it is just to estimate his earnings including prospective earnings at a minimum of Rs.6,000/- per month. Once same is taken into consideration, now coming to the permanent disability, the certificate issued and the evidence of PW.2 from mal-union of fractured bone and shortening of 1 ½ inch with loss of ankle movements even taken the same at 40% effecting the professional carrier from the

[2] AIR 1960 SC 335
[3] (2001) 8 SCC 197=AIR 2001 (SC) 3218

functional disability, the amount of compensation the claimant entitled comes to Rs.6,000/-x12x40/100=Rs.28,800/-x16.5=Rs.4,75,200/- + Rs.2,09,000/- towards medical expenses of what the Tribunal awarded from the proof of medical bills with reference to Ex.A12 and even taken Rs.5,000/- towards transport charges, Rs.5,000/- extra nourishment, Rs.10,000/- towards proportionate loss of earnings for minimum 2 months, attendant charges even Rs.5,000/- and Rs.20,000/- towards pain and sufferance to the injury even comes to Rs.7,29,200/- rounded to Rs.7,30,000/- to enhance from Rs.4,16,000/-. However, it is made clear that because of delay of 253 days in filing the appeal for the period of delay the petitioner is not entitled to interest for said period so to deduct by the insurer in payment/deposit of the balance amount.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.4,16,000/- to Rs.7,30,000/- with rate of interest @ 7.5% per annum, from date of claim petition till realization but for the 253 days supra on the balance due. In other respects the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.12.2016
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