

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.601 OF 2010

JUDGMENT:

The injured claimant maintained O.P. No.1748 of 2007 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge, (III FTC), Warangal (for short 'the Tribunal') against respondent—RTC under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.2,50,000/- with averments that on 14.07.2007 the claimant along with his friend G.Somaiah were proceeding on motor cycle bearing No.AP 20 A 9977 towards Parvatagiri side and when they reached near Seetya Thanda at about 10.50 am, RTC bus bearing No.AP 10 Z 4594 came in opposite direction in a rash and negligent manner with high speed and dashed against the motor cycle, as a result, they fell down and sustained compound fracture besides other injuries. From the contest of respondent—RTC, the Tribunal awarded compensation of Rs.2,05,667/- with interest at 7.5% per annum by adopting the multiplier method and by taking 20% functional disability. It is impugning the same, the injured claimant maintained the present appeal.

2) It is the submission of the learned counsel for appellant—claimant that the Tribunal gravely erred in awarding compensation as prayed for by taking the disability of 50% despite Ex.A6—disability certificate issued by PW.3 who deposed as member of the medical board assed 50% disability taken only 20% disability, thereby the award is unsustainable.

3) Heard learned counsel for appellant-claimant. Even notice served on respondent—RTC failed to attend, hence taken as heard. Perused the material on record.

4) The Court cannot ignore the important documents i.e., Ex.A4—injury certificate issued by MGM hospital and Ex.A3—Radiology report, Ex.A9—discharge card of MGM hospital coupled with evidence of PW.4—Dr.M.Nagendra Babu, who treated him stated that the injured sustained grade-III B compound comminuted fracture of both bones of lower 1/3rd of right leg and he was conducted operation on 17.07.2007 and V-nail was inserted and he was discharged on 06.08.2007. He further admitted that Ex.A3—Radiology report, Ex.A4—injury certificate, Ex.A9—discharge card and Ex.C3-case sheet are issued by their hospital. The discharge summary did not speak anything with regard to any permanent disability. PW.5—Dr.T.Venkateswar Rao, Civil Assistant Surgeon in MGM Hospital, Warangal deposed that he was one of the member of the medical board of Warangal and he issued disability certificate therefrom. The Tribunal considered that there is no basis to take 50% disability however taken 20% disability. In fact even taken 20% disability of limb, it is not a disability of limb but for entire functional disability of his body as laid down by the Apex Court in **Raj Kumar vs Ajay Kumar**¹.

5) Having regard to the above but for to make a minimal increase, there is nothing to interfere with the award of the Tribunal.

6) Accordingly and in the result, the appeal is partly allowed by enhancing from Rs.2,05,667/- (Rupees two lakhs five thousand six hundred sixty seven only) to Rs.2,20,000/- (Rupees two lakhs twenty thousand only). In other respects, the award of the Tribunal holds good. No order as to costs.

¹ 2011 ACJ 1

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

Dr. B. SIVA SANKARA RAO, J

Dt.06.12.2016
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