

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.646 OF 2010

JUDGMENT:

The injured claimant, who maintained M.V.O.P. No.770 of 2007 on the file of Motor Accidents Claims Tribunal-cum-I Additional District & Sessions Judge, Guntur (for short 'the Tribunal') against owner and insurer of the car bearing No.AP 7 G 2759 and subsequent transferee of the said car, for a compensation of Rs.3,50,000/- under Section 163-A of Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained by him in the motor accident dated 14.05.2007 saying while he was going on his motor cycle along with his friends and reached near Lakshmi Vidya Cold Storage in the outskirts of Nallapadu at about 5.30 pm, due to rash and negligent driving of the car driver coming in opposite direction dashed against the petitioner, as a result the claimant sustained injuries on his head, right leg, and other parts of his body and shifted to Government Hospital and later shifted to Sai Bhaskar Hospital, Arundelpet. From the 1st respondent—owner remained *ex parte* and 3rd respondent though appeared through advocate filed no separate counter but for counter filed by 2nd respondent—insurer disputing the claim petition averments and the Tribunal having held that the accident was the result of rash and negligent driving of the driver of the car from the evidence of PW.1 with reference to Ex.A1—FIR, Ex.A2—charge sheet, awarded compensation of Rs.90,000/- with interest at 7.5% per annum. Impugning the said quantum as utterly low, the present appeal is maintained by the claimant.

2) The learned counsel for appellant/ claimant contended that the Tribunal ought to have taken 30% permanent disability as deposed by PW.1, which effects his avocation and earnings and should have

been adopted the multiplier method in calculating the compensation as prayed for, hence to allow the claim as prayed for.

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

4) Heard learned counsel for the appellant/ claimant and learned standing counsel for insurer. Perused the material on record.

5) The material placed before the Tribunal is evidence of PW.1—injured, PW.2—Dr B.Narendra Reddy of Sai Bhaskar Hospital and Exs.A1 to A8 and Ex.X1 and X2 of which Exs.A3 to A5—certified copy of wound certificate, discharge summary, medical bills of Rs.1,17,015/- are issued by Sai Bhaskar Hospital. Ex.A6 to A8 are other hospital bills. Ex.A3—wound certificate issued by Sai Bhaskar Multi Speciality Hospital shows that he admitted on 14.05.2007 and discharged on 28.06.2007 and he was readmitted on 07.06.2008 and there is nothing to show he was treated as in-patient much less for any period. The Ex.A3 further shows fracture of both bones of right leg, fracture of right leg calcaneum, avulsion of right foot sole and fracture of shaft of right femur upper 1/3rd and lacerated wound on the knee. No certificate of the Government Hospital as to admission and discharge filed though petition averments show initially he admitted in the hospital and treated as inpatient. There is nothing to believe he incurred an amount of Rs.1,17,195/- in Sai Bhaskar Multi Speciality Hospital, Guntur for one day examination.

6) So far as disability as deposed by PW.2 is concerned, he did not issue any disability certificate. The injured was not even examined

by medical board. However, the fact remains the petitioner is physically present before the Court and examined by Court from the right foot evolution injury to the sole he is limping and unable to walk freely, therefrom it is just to take 20% functional disability including on the earnings. As the injured is aged about 37 years, the multiplier applicable is '15'. The accident is of the year 2007. As per **Latha Wadhwa vs State of Bihar**¹, in the absence of proof of earnings minimum earnings can be taken at Rs.3,000/- per month as the accident occurred nearly 6 years after the expression with prospective increase it can be taken at Rs.3,600/- per month, 20% therein comes to Rs.720/-, the loss of dependency comes to Rs.1,29,600/- (Rs.720/- X 12 X 15). Apart from it, the claimant is entitled to Rs.21,400/- towards medical expenses, treatment, loss of earnings, attendant and transport charges, in all it comes to Rs.1,50,000/- is the just compensation.

7) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.90,000/- to Rs.1,50,000/- with interest at 7.5% per annum. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.16.12.2016
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¹ AIR 2001 SC 3218