

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.397 of 2010

JUDGMENT:

The injured claimant, who maintained the claim in MVOP No.198 of 2006 under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.1,00,000/-, against the owner and insurer of the lorry bearing No.TN 23/ C 3767, for the alleged injuries saying that on 12.10.2003, while the injured among others were travelling in a mini lorry bearing No. AP 04U 5187, after attending marriage, at Gollapalli Harijanawada of Yerraguntla-kadapa National Highway, due to the rash and negligent driving of the driver of the lorry, dashed the mini lorry and from the contest by the 2nd respondent-insurer of 1st respondent-owner remained ex parte saying due to gross negligence of the mini lorry in which the injured was travelling, from collision between the two vehicles and the other lorry is also necessary party non-joinder fatal, the tribunal having held that the accident was occurred from collision between two vehicles and the other lorry is also necessary party non-joinder fatal and that the accident was result of rash and negligent driving of the lorry of the 1st respondent from Exs.A1-FIR and A3-charge sheet are against the driver of the lorry of the 1st respondent

and also from the oral evidence of PW.1 for no oath against oath to disbelieve and awarded compensation of Rs.18,600/- by disbelieving the disability certificate-Ex.A6 issued by PW.2 of Lakshmi Venkateswara Orthopaedic Trauma Care and Maternity Hospital, Kadapa, from Ex.A2-wound certificate showing a lacerated injury of right parietal region of scalp, two contusions on right knee of 2x5 c.ms and gone to private Ortho for treatment and the opinion formed by Dr.G.Venkata Subbaiah of a private hospital is fracture of right tibia and was in patient for 12 days in so certifying her first injury is simple and second is grievous. It is impugning the award dated 14.08.2007 in MVOP No.198 of 2006 as utterly low, the claimant filed the present appeal.

2. It is the contention of the learned counsel for the claimant in support of the grounds of appeal that the tribunal gravely erred in not awarding compensation as prayed for with reference to permanent disability deposed by PW.2 and certified in Ex.A6 with Ex.A2-wound certificate of Government Hospital.

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

4. Heard and perused the material on record.

5. Ex.A2 is the wound certificate issued by the Government District Headquarters Hospital, Kadapa, which shows the injured against medical advise left for taking treatment in a private hospital of PW.2 and P.W.2 certified that there is a fracture of right tibia from the contusion over right knee besides simple lacerated parietal region over scalp. Once there is not a compound fracture but injury to the right tibia and not to tibia and fibula, the question of permanent disability does not arise much less to say 35% Thereby, the tribunal rightly not believed either Ex.A6 or evidence of PW.2. However, what the quantum of compensation awarded of Rs.18,600/- for the said simple injuries and the fracture injury is utterly low and requires to enhancement. So far as finding that the accident was the result of rash and negligent driving of the lorry of the 1st respondent which dashed the motor cycle that also requires no interference. Thus, the just compensation the claimant is entitled to is Rs.20,000/- for the tibia fracture, Rs.4,000/- for the lacerated injury over the right parietal scalp, Rs.5,000/- towards loss of earnings, Rs.1,000/- towards transport charges, Rs.5,000/- towards attendant charges and extra nourishment and Rs.5,000/- towards medical expenses, though PW2 deposed as if incurred Rs.10,000/- from treatment given on a paper is incurred

Rs.5,600/- . Thus, the total compensation comes to Rs.40,000/- .

6. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.18,600/- to Rs.40,000/- . Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:23.11.2016
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