

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.592 of 2010

JUDGMENT :

The injured/claimant, who maintained M.V.O.P.No.460 of 2007 under Section 166 of the Motor Vehicles Act (for short, 'the Act') before the IV-Additional District Judge-cum-Motor Accident Claims Tribunal, Kurnool, (for short, 'the Tribunal') claiming compensation of Rs.2,00,000/- against the owner and insurer of tractor and trailer bearing Nos.AP 21 V 9271 and AP 21 V 9278, for the injuries sustained on 23.05.2007 at about 8.00 p.m. with averments that while he and his friend on his motor cycle bearing No.AP 02 P 5680 were proceeding and when they reached near Yellukur Estate, Nandikotkur road, due to the rash and negligent driving of the driver of tractor-trailer of the 1st respondent, the tractor-trailer dashed the motor cycle, as a result, he and his friend fell down and sustained injuries, though the 1st respondent-owner remained ex parte and the 2nd respondent-insurer contested and from the evidence of PWs.1 and 2, (PW.2 is the Doctor of Government Hospital, Kurnool) and Exs.A.1 to A.6, Ex.B.1-policy marked by consent and among which Exs.A.1 and A.2 are the F.I.R. and charge sheet against the driver of tractor-trailer and his appearance in the criminal case is covered by Ex.A.3-docket proceedings and Exs.A.4 and A.5 are the wound certificate and discharge summary referring to Ex.X.1-case sheet and Ex.A.6-bunch of bills, the Tribunal held that the injured is entitled to Rs.35,000/- with interest at 7.5% per annum vide award dated

09.07.2008, it is impugning the said quantum as utterly low, present appeal is maintained.

2. Heard learned counsel for the claimant and also the 2nd respondent-insurer and perused the material on record.

3. Though PW.2 deposed as if he examined a day before the injured and on the other hand of his evidence injured also present before the Court, there is no disability certificate issued and there is nothing even to show what is the disability atleast apart from, admittedly the injured never appeared even complaining disability, much less before the Medical Board and the Tribunal is thereby right in not believing that too, from the very evidence of PW.2-Doctor. It is clear that wound is infected and not completely cured and the X-ray discloses implant fixed, therefore, requires to be removed and there is another operation for re-union and it is only from that unable to sit or squat and there is limitation in movement. Once such is the case, it is not even mentioned whether the disability is permanent or partial and due to shortening he is limping. Once such is the case, there is nothing to interfere against the finding of the Tribunal. There is no permanent disability including from the very evidence of PW.2 and there is no description about any disability or any requirement of further treatment either from the wound certificate Ex.A.4 or from the discharge summary Ex.A.5 or from the case sheet Ex.X.1. The evidence on record no doubt shows once admitted as inpatient and undergone treatment and again readmitted for a short period and what

PW.2 deposed is injured is not regular in undertaking the treatment, that resulted the infection in the wound. Ex.A.6 is the bunch of medical bills and even taken all the same into consideration, from the treatment in the Government Hospital for the two fractures, from which injury No.1 is compound fracture of tibia and fibula and the other is to the ankle. Therefore, it is just and necessary to award Rs.10,000/- towards medical expenses including from the consideration of Ex.A.6 bills and Rs.25,000/- towards pain and sufferance, Rs.20,000/- can be awarded towards the injury No.3, Rs.2,000/- towards simple injury, Rs.7,000/- towards loss of earnings, Rs.1,000/- towards transport charges, Rs.2,000/- towards extra nourishment and Rs.3,000/- towards attendant charges, in all it comes to Rs.70,000/-.

4. Accordingly, the appeal is allowed in part by enhancing the compensation from Rs.35,000/- to Rs.70,000/- (Rupees seventy thousand only). Rest of the terms of the award of the Tribunal holds good.

5. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

2nd December 2016.

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