

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.408 of 2010

JUDGMENT:

The injured claimant who maintained O.P.No.188 of 2006 for a compensation of Rs.3,00,000/- under Section 166 Motor Vehicles Act against the owner and insurer of motorcycle bearing No.AP-21-H-8089 for the injuries sustained in the accident dated 18.11.2005 saying while he was proceeding on his cycle, the rider of the bike of the 1st respondent in rash and negligent manner dashed the claimant, as a result of which he fell down and sustained injuries and undergone treatment in the Government Hospital, Nandyal, as inpatient till 24.11.2005 and later in Private Nursing Home till 26.12.2005 and by the date of accident he was aged about 17 years studying Intermediate I year in Balaji College, Nandyal, and his academic year is impaired from the injuries sustained and thereby entitled for compensation after contest by the 2nd respondent from the 1st respondent remained exparte, the Tribunal, having held the accident was the result of the rash and negligent driving of the driver of the 1st respondent, awarded a compensation of Rs.63,500/- saying though Ex.A6 is the disability certificate issued proved from the evidence of PW.2 who deposed that he is the member of the Medical Board and the medical board issued the certificate with disability of 55% but for in the cross examination stated not disclosed permanent or partial disability. The evidence shows there is total weakness of the right side limbs even difficult in speech and the examination in Court while recording evidence, the Court also made an observation to that effect in Para 7 of the judgment saying from the weakness of the

right upper and lower limb involving distal muscles, the deficiency is permanent in nature and he cannot write with hand and cannot move without assistance throughout in his continuous activities, what the Tribunal from the said evidence saying Paralysis of right upper and lower limb, he is entitled of Rs.30,000/- for the said injury and the other sums comes to Rs.63,500/- towards transport charges, attendant charges, pain and sufferance and loss of earnings. It is impugning said compensation awarded as utterly low, present appeal is maintained.

The contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the claimant are that the Tribunal ought to have awarded the just compensation as prayed for. Whereas it is the submission of the learned counsel for the insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere.

In the course of hearing, the Court secured the personal appearance of the injured claimant, he came with the assistance of his mother and he is not in a position to freely walk, his right hand is totally paralyzed and functionless and right leg is not with free movement and unable to walk freely and it is also difficult for his pursuing ordinary pursuits. Once the medical board assessed disability at 55% that also with evidence of PW.2, member of Medical Board in issuing the certificate from said verification, there is nothing to dispute the same by the insurer. Even the Tribunal ought to have considered all these aspects.

Having regard to the above, from his age at the time of accident about 17 years and the multiplier is applicable as per

Sarla Verma v Delhi Transport Corporation¹ is '18' and the accident was dated 18.11.2005 even as per **Latha Wadhwa vs. State of Bihar**² in the absence of proof a minimum of Rs.3,000/- per month to be taken and the expression is more than 4 years after the accident even taken Rs.3,400/- per month i.e., $\text{Rs.3,400/-} \times 55/100 = \text{Rs.1,870/-}$ $\times 12 \times 18 = \text{Rs.4,03,920/-}$, for the 2 fractures i.e., intra cerebral bleed in left capsule ganglionic region among other injuries of skull right occipital area even for pain and sufferance Rs.50,000/- awarded, Rs.20,000/- towards medical expenses though claimed Rs.50,000/-, for 2 months loss of earnings Rs.6,800/-, attendant charges, transport charges and extra nourishment even taken Rs.10,200/-, it comes to Rs.4,90,920/- rounded to Rs.4,91,000/- to enhance from Rs.63,500/- which is the just compensation.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.63,500/- to Rs.4,91,000/- with rate of interest @ 7.5% per annum from the date of claim petition till realization, subject to payment of deficit court fee before the Tribunal. The appellant/claimant is permitted to withdraw Rs.2,00,000/- and remaining amount should be kept in FD and to pay the interest yielded every month to the account of the Savings Bank Account of the injured claimant unless the further payment investment for any purchase of the immovable property or the like. In other aspects the award of the Tribunal holds good.

¹ 2009 ACJ 1298.

² (2001) 8 SCC 197=AIR 2001 (SC) 3218

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.12.2016
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