

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.3202 of 2004

JUDGMENT:

The injured of O.P.No.114 of 1999 maintained the claim under Section 166 of Motor Vehicles Act (for short 'the Act'), for the injuries sustained in the motor accident dated 28.08.1998, against the driver, owner and insurer of the auto bearing No.AP-31-T-1574 saying when he was going on left side of the road near Cooperative Urban Bank, Vizianagaram, 1st respondent driver driven the vehicle of 2nd respondent insured with respondent No.3, in rash and negligent manner dashed him, as a result of which he sustained the fracture injuries and treated in the Government Hospital as inpatient and out patient and also in the private hospital. The Tribunal having held the accident was the result of the rash and negligent driving of the driver of the 1st respondent insured with 3rd respondent from the policy covers the risk in fixing the joint liability.

Coming to the quantum, from the evidence on record of Ex.A4 disability certificate issued by the Medical Board proved through PW.2 vis-à-vis disability certificate issued by him under Ex.A7 with case sheet and X-ray Exs.X1 and X2 vis-à-vis Ex.A6, arrived at a compensation of Rs.45,000/- with interest @ 9% per annum. The evidence of PW.2 shows he was admitted in the hospital for the fracture of right hip joint and fracture of right radius and discharged on 17.01.1999, having been treated as inpatient from 28.08.1998, which is the date of accident to say inpatient for nearly four months. He further deposed there is mal union of the hip joint fracture that was angulated and there was shortening of right leg by 3/4th inch also reflect in latest X-rays Exs.X1 and X2 vis-à-vis Ex.A6 X-ray though he assessed the disability as 50%, he mentioned as

permanent partial, it was not stated the disability to the whole body but for to show only to the limb.

Whereas it is the submission of the Sri K.Subba Rao, learned counsel for the 3rd respondent insurer that the award of the Tribunal holds good for this Court while sitting in appeal, there is nothing to interfere and the disability certificate is unreliable and Tribunal thereby not taken into consideration apart from the same not stated for the whole body but confined to limbs that too partial cannot be considered as permanent disability besides rate of interest is excessive with the discretionary power under Section 171 of the Act.

Having regard to the above, even taken therefrom what the Tribunal awarded of Rs.45,000/- for the injuries, disability, including pain and sufferance, loss of earnings for four months, attendant charges and transport charges, extra nourishment, medical expenses and treatment, the same is utterly low to enhance to Rs.1,00,000/-, however to reduce the rate of interest from 9% to 7.5% per annum.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.45,000/- to Rs.1,00,000/-, however by reducing the rate of interest from 9% to 7.5% per annum. Rest of the award holds good.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.08.2016
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