

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.722 of 2009

JUDGMENT :

The injured claimants of O.P. No.987 of 2001 maintained the claim against the owner of the motor bike bearing No. AP 25 C 4460 and its insurer covered by Ex.B-1 policy, maintained the claim under Section 166 of the Motor Vehicles Act for Rs.3,00,000/- for the injuries by the motor accident saying while he was proceeding on Suzuki bike bearing No.AP 25 C 4151 at Bhiknoor village the crime bike of the 1st respondent insured with the 2nd respondent supra came in a rash and negligent manner and dashed from behind and he fell down and the bike of the 1st respondent run over the leg of the petitioner from which he sustained injuries. The Tribunal found the accident was result of the rash and negligent driving of the 1st respondent's rider insured with the 2nd respondent in fixing joint liability and coming to the quantum of compensation, the Tribunal observed that as per Ex.A-3 wound certificate petitioner complained stiffness of the knee due to mal-united fracture of lateral condyle of tibia and for that fixed compensation of Rs.20,000/- by staying he was a Government teacher and for that medical leave during treatment from 24.12.1999 to 14.03.2000 for 81 days and thereby entitled to loss of earnings and for that granted Rs.51,000/- and on other respects granted

remaining compensation to a total of Rs.1,59,100/- the claim maintained the appeal impugning the said compensation utterly low with the contentions that the Tribunal ought to have been awarded reasonable amount instead of Rs.20,000/- under the head of injuries and granting of 9% p.a. interest is utterly low. The learned counsel for the appellant reiterated the same.

2) The 1st respondent owner remained exparte before the Tribunal and unauthorized as not necessary party to the appeal. The 2nd respondent insurer representing by Sri Bhaskara Rao but for no cross-objections what the compensation awarded is excessive including no amount can be awarded of Rs.51,000/- for alleged loss of earnings for the medical leave availed which is not even prone to encashment for not an earned leave and the future earnings loss of Rs.68,000/- awarded also unsustainable and what he sustained is only a fracture of condyle of tibia for which Tribunal awarded Rs.1,59,100/- and thereby sought for dismissal including to reduce at 9% p.a. to 7.5% p.a. as held in **Rajesh v. Rajbir Singh** [— 1] .

3) Heard both sides and perused the material on record.

4) The granting of the three months' medical leave period as loss of earnings at Rs.51,000/- by the Tribunal

per se unsustainable. The alleged future loss of earnings for four months of Rs.68,000/- also unsustainable. Once such is the case as what the Tribunal awarded of Rs.1,59,100/- for the said fracture injury including for medical expenses for nothing shown even not reimbursed, any pain and sufferance, extra nourishment, attendant and transport charges is more than excessive and nothing to enhance.

5) Accordingly and in the result, the appeal is dismissed. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.01.2016

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^[1] 2013 ACJ 1403=(4)ALT-35(SC).