HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Cross-objections(sr) No.40719 of 2012
in/and
M.A.C.M.A.No.72 OF 2010

JUDGMENT:

The 2nd respondent-Insurer among two respondents including owner of the crime vehicle (car) bearing No.AP 11 W 9602 of O.P.No.543 of 2007 in the claim filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* before the learned Chairman of the Motor Accidents Claims Tribunal–cum-XXII Addl. Chief Judge, (*for short, 'Tribunal')*, by the injured claimant, due to alleged rash and negligent driving of the driver of the crime vehicle of 1st respondent supra on 22.01.2006 while proceeding on his two wheeler, for compensation of Rs. 21,83,000/-, from the contest by the 2nd respondent-Insurer for the 1st respondent-owner remained exparte, the tribunal since awarded on 26.08.2009 Rs.14,54,000/- with interest at 7%p.a. fixing joint liability, preferred the appeal impugning the same in the grounds in the appeal and from oral submission that the tribunal failed to see that the injured is responsible for the accident, he has not filed any income tax returns, the tribunal erred in fixing the earnings of the injured at Rs.10,000/- p.m. without any basis, the tribunal ought to have seen that the sale deeds cannot be considered as his genuine income, the tribunal erred in awarding Rs.1,00,000/- for an artificial leg without any material and also erred in taking wrong multiplier and the compensation granted is also excessive and exorbitant, hence to reduce the compensation as prayed for by setting aside the award.

2.On the other hand, the injured claimant preferred cross-objections with contentions that the tribunal failed to take the earnings of the injured at Rs.10,000/- p.m. though there is sufficient evidence to substantiate the income of the injured of he purchased property worth about Rs.30,00,000/- under Exs.A.5 to A.10 sale deeds and also not considered future financial growth of petitioner, the tribunal erred in finding non payment of income tax as fatal, and hence, to allow the cross-objections by granting compensation as prayed for.

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

4. Coming to the first ground of negligence of the injured resulting the accident as per the claim petition averments and the evidence of P.W.1 injured that while he was proceeding on his two wheeler at Bandlaguda at about 7.00P.M. the car of the 1st respondent coming in opposite direction dashed his vehicle from which he fell down unconscious and sustained injuries and was shifted to Sadan Hospital and later to Yashoda hospital, Malakpet and from the crush injury to the left leg resulted amputation above knee during the 5 days treatment as in-patient which effected in functional disability and earnings. No doubt the Ex.A.1 First Information Report and Ex.A.3 chargesheet are against the driver of the vehicle of R.1. The P.W.2 Oritho surgeon of Yashoda hospital stated that the claimant was operated to the right leg for crush injury and amputation was done above knee during the 5 days treatment as in patient and the Ex.A.4 discharge summery also corroborates the evidence of P.W.2. Basing on that the tribunal awarded compensation Rs.14,54,000/- with interest at 7%p.a. with joint liability. The claim is under Section 166 of the M.V.Act and from the age shown above 35 years the multiplier applicable is only 16 but not 17. The manner of accident is while proceeding in the opposite direction. The claimant was running hardware shop with name M/s Santoshi Matha hardware shop and doing labour contracts for construction work and colouring etc. He did not file any R.C. or any municipal payment tax and he did not file any accounts

regarding any avocation and income. So far as the amputation of the leg above knee concerned as per the W.C. Act schedule-1 item No.19 amputation below middle thigh, the disability is 60%. The tribunal rightly taken including from the evidence of P.W.2 at 60%. Once the accident is while both the vehicles proceeded in opposite direction and the amputation is to the left leg therefrom there is definitely contribution by him to the accident as pointed out by the learned counsel and from the evidence of P.W.1 it is the amputation to the left leg and not to the right leg. From the said circumstances to appreciate, irrespective of the P.W.3 claimed as an eye witness, as if there is total negligence of the driver of the car of the 1st respondent. Once such is the case as laid down by the Apex Court in Municipal Corporation of Greater Bombay Vs. Laxman Iyer[1], in which it is taken 25% contribution of the injured and in the facts even taken 10%. The tribunal did not consider the same as pointed out by the learned counsel for the appellant/Insurer. The tribunal taken the earnings of Rs.10,000/-p.m. No doubt there is no proof of avocation much less any accounts or professional tax or R.C. or license obtained under the Shops and Establishments Act, for alleged business or doing contract works, however, when the Ex.A.5 to A.10 and the sale deeds of which, the Exs.A.6 to A.10 relates to three years period and once the tribunal arrived therefrom Rs.10,000/- per month by the date of accident on 22.01.2006 for 60% disability for Rs.6,000/- p.m. x 12x 16 multiplier, it comes to Rs.11,52,000/- and once the permanent disability of 60% from the date of accident considered, again taken loss of earnings of Rs.20,000/- does not arise but for to award maximum of Rs.8,000/- and so far as for artificial limb even awarded Rs.1,00,000/- besides no proof

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[1] 2003(8) SCC 731

filed of anything incurred above to consider, for the same is required for any avocation including to attend and supervise his lands and other functional activities of day-to-day life even to consider and medical expenses incurred of Rs.75,000/- even consider, Rs.5,000/- towards transport charges, Rs.30,000/- towards pain and sufferance for that injury and Rs.5,000/- towards attendant charges awarded and after reducing 10% therein, it comes to Rs.12,38,000/- rounded to Rs.12,40,000/- which is just to reduce from Rs.14,54,000/- however by enhancing the interest from 7% to 7.5%.

5. In the result, both the Appeal and Cross-Objections are allowed in part by reducing the compensation from Rs.14,54,000/- to Rs.12,40,000/- however by enhancing the rate of interest from 7% to 7.5%. In other respects, the award of the tribunal holds good. There is no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:30.12.2016
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