

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4447 of 2008

JUDGMENT:

The injured claimant of motor accident dated 07.06.2002, maintained the claim against driver, owner and insurer of the lorry bearing No.AP 5U 9913 under Section 166 of the Motor Vehicles Act for a compensation of Rs.7,50,000/- and the tribunal from the evidence on record and contest by the insurer from the driver and owner remained ex parte, vis-à-vis PWs 1 to 3 including Doctor, one of the members of the District Medical Board, Kakinada with reference to Ex.B1-policy and Ex.X1-medical record along with X-ray marked by consent, of which Ex.A5 is the Disability Certificate issued by the Medical Board proved through PW3 of the petitioner got 40%permanent disability. There is no proof regarding the claim that he is a lorry mechanic to take into consideration that too when the counter vis-à-vis cross examination of PW1 disputed by the insurer about his avocation, in awarding compensation of Rs.2,65,334/- with interest at 6% p.a. by the tribunal on 08.08.2008 in M.V.O.P.No.705 of 2003, taken the earnings of the injured at Rs.2,000/- p.m. and the appeal is maintained impugning the said compensation as utterly low

so also the percentage of disability 50% taken by the tribunal is not correct to enhance equally to take minimum Rs.4,000/-p.m. as earnings of the injured and to adopt correct multiplier and award compensation as prayed for with enhancement of interest.

2. The learned counsel for the appellant/ claimant reiterated the said contentions in the course of hearing.

3. Whereas, it is the submission of the learned counsel for the insurer/ 3rd respondent that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere including to enhance the rate of interest as in *Sarla Verma v. Delhi Transport Corporation*¹.

4. Heard and perused the material on record.

5. The evidence on record clearly speaks the claimant sustained 40%disability from shortened upto 1” of the left leg and also ankle joint thereby assessed and issued the disability certificate along with other members of the medical board i.e., PW.3. There is no dispute on this evidence. There is no basis even to the tribunal taken disability at 50% However, taking of Rs.2,000/- p.m. as earnings is utterly low even from the expression of the Apex Court in *Lata Wadhwa v. State of Bihar*² of minimum Rs.3,000/- to be taken after expression by the date of

¹ 2009 ACJ 1298

² AIR 2001 (SC) 3218

accident at Rs.3200/- p.m. 40%therein comes to Rs.1,280/- p.m. and Rs.15,360/- p.a. and taken multiplier '17' applicable from his age, it comes to Rs.2,61,120/-(Rs.15,360/-p.m x 17). Apart from it, the claimant is entitled to Rs.38,880/- towards medical expenses, extra nourishment, attendant charges and loss of earnings. Thus, Rs.3,00,000/- is the just compensation and the rate of interest is enhanced from 6%to 7.5%p.a.

6. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.2,65,334/- to Rs.3,00,000/- with interest at 7.5%p.a. from the date of petition till realization. Rest of the award of the tribunal holds good. There is no order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:17.09.2016
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