

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4610 of 2008

JUDGMENT:

The injured claimant, who maintained M.V.O.P.No.714 of 2005 under Section 166 of the Motor Vehicles Act, for a compensation of Rs.14,00,000/- against the driver, owner and insurer of the lorry bearing No.ORD 5095, with the averments that on 18.09.2004, while he was proceeding on his Hero Honda Motorcycle bearing No.AP 5AJ 394 to go to Tallapudi near Kovvur Toll Gate, he stopped the bike and the auto bearing No.AP 5U 4337 stopped behind the bike and the lorry driven by the 1st respondent belongs to the 2nd respondent insured with the 3rd respondent with aluminium load came in a high speed, dashed the auto and in turn the motor bike and three persons travelling in the auto died and he sustained injuries and front wheel of the auto ran over his left hand and from the evidence and on contest having held that the accident was the result of rash and negligent driving of the 1st respondent, the tribunal awarded compensation of Rs.3,65,774/- with interest at 6% p.a. vide award dated 29.08.2008, by taking 20% permanent disability by not giving credence to the evidence of PW.2 and to the so called physically handicapped Social Purposes,

based on that G.O. issued disability certificate of 100% from what PW.1 deposed of there is 80% recovery, hence the tribunal taken 20% permanent disability with reference to the evidence of PW.2 also and impugning the same, maintained the present appeal with the contentions that the award of the tribunal in granting compensation is utterly low and the tribunal ought to have taken into consideration 100% permanent disability and should have adopted multiplier by properly taking the multiplicand and thereby sought for allowing the claim as prayed for.

2. The learned counsel for the appellant reiterated the same.

3. Whereas, it is the submission of the learned counsel for the 3rd respondent-insurer that award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere.

4. Heard and perused the material on record.

5. There is nothing to interfere so far as the factum of the accident was the result of rash and negligent driving of the driver of the 1st respondent of the crime lorry belong to the 2nd respondent insured with the 3rd respondent in fixing liability. However, coming to the rate of interest awarded by the tribunal at 6% is utter low, which is required to be

enhanced to 7.5% vide TN Transport Corporation v. Raja Priya¹ and Rajesh Vs. Ranbir Singh²

6. Coming to the quantum of compensation, personal appearance of the petitioner is called and he appeared before the Court and his left hand is mal-functioning and unable to freely lift and he claimed that he is suffering with some mildness and otherwise rational answers, thereby what tribunal taken of 20% permanent disability requires to be enhanced to 30% including from the evidence on record of PWs.1 and 2 by not giving credence to the disability certificate since not for medico legal purpose and for other claims. So as to Rs.1,08,000/- in this regard by taking the earnings Rs.2,500/- p.m. with multiplier '18' concerned, the earnings as on the date of accident i.e. 18.09.2004 can be taken at Rs.3,400/- p.m. and the multiplier applicable is '17'. Accordingly, it comes to Rs.6,93,600/- (Rs.3,400/- x 12 x 17) and 30% of the same comes to Rs.2,08,080/-. Out of it, the amount of Rs.1,08,000/- already awarded by the tribunal under the head of permanent disability is deducted, it comes to Rs.1,00,080/- rounded to Rs.1,00,000/- to be added to Rs.3,65,774/-. Thus, in total, the compensation comes to Rs.4,65,774/-.

¹ (2005) 6 SCC 236

² 2013 ACJ 1403

7. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.3,65,774/- to Rs.4,65,774/- with interest at 7.5%p.a. from the date of petition till realization. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:26.09.2016
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