

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.1650 of 2004

JUDGMENT:

Heard the learned counsel for the appellant-claimant and also taken as heard the respondent Nos. 2,3 and 4 who were served but failed to attend and the appeal against 1st respondent-driver-cum-owner of the lorry bearing No.ATS 979 dismissed for default for not taking fresh notice.

2. The claim petition M.V.O.P.No.186 of 2001 is filed by the appellant-claimant against the 4 respondents on the file of the Chairman, Motor Accidents Claims Tribunal–cum-IV Addl.District Judge, East Godavari, Kakinada, (for short, ‘the Tribunal’), maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, ‘the Act’*), for compensation of Rs. 1,50,000/-(Rupees one lakh fifty thousand only) for the injuries sustained in the motor accident dated 2/3.03.2001 at about 12.30 P.M. in the midnight; after contest, the tribunal awarded compensation of Rs.27,500/-(Rupees twenty seven thousand and five hundred only) with interest at 9%p.a. fixing liability against the Respondent Nos.1 and 2(Owner-cum-driver and Insurer of crime lorry).

3. Impugning the said quantum as utterly low, the present appeal is maintained by the appellant-claimant with the contentions in the grounds of appeal that the tribunal ought to have considered the compensation as prayed for and failed to consider the medical expenses incurred and awarded only Rs.500/- and Rs.3,000/- towards pain and sufferance and Rs.11,520/- for permanent disability, hence sought for allowing the claim as prayed for.

4. Among the 4 respondents, R.1 is driver-cum-owner of the lorry supra insured with the R.2. R.3 is the driver of the auto rickshaw bearing No. AP 5 X 5312 in which the injured was travelling at the time of accident and R.4 is the Insurer of the auto. The sum and substance of the claim is that while travelling in the auto of R.3, due to rash and

negligent driving of the lorry of R.1, it dashed against the auto due to which the auto turned turtle and the appellant-claimant sustained injuries.

5. It is not in dispute that the accident was occurred while the injured was travelling in the auto but for saying from the lorry driver dashed the auto that resulted the accident. The tribunal rightly found having recorded the evidence fresh in mind from the facts including from Ex.A.1 First Information Report which showing against lorry driver and the evidence of the injured showing of no fault of auto driver but of the lorry driver. The said finding of the tribunal requires no interference by this Court.

6. Now coming to the quantum of compensation, the injuries sustained by the appellant-claimant as per the evidence of P.W.1 injured and P.W.2 doctor who treated her with reference to Ex.X.1 case sheet with X-ray and Ex.A.2 wound certificate showing fracture of left leg and she was operated by insertion of steel rods and alleged 50% permanent disability from shortening of left leg with no basis.

7. A perusal of record shows the injury supra is the main injury. Taking into consideration of the same from the compound fracture even awarded Rs.25,000/-, towards medical expenses and treatment Rs.5,000/-, for loss of earnings even Rs.6,000/- and for attendant and transport charges of Rs.4,000/- in total of Rs.40,000/-, is just to award by enhancing from Rs.27,500/- awarded by the tribunal.

8. In the result, the appeal is partly allowed by enhancing the compensation to Rs.40,000/-(Rupees forty thousand only) from Rs.27,500/-(Twenty seven thousand and five hundred only). Respondents are directed to deposit said amount with interest within one month from today, failing which the appellant can execute and recover. On deposit or execution and recovery from the respondents, the appellant-claimant is permitted to withdraw the amount. Rest of the award of the tribunal holds good. There is no order as to costs in the appeal.

Dr. B. SIVA SANKARA RAO, J

Date: 17.02.2016

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