

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMAMP No.4477 of 2016

In/and

MACMA No.4771 OF 2008

JUDGMENT:

The injured claimant, aged about 37 years, maintained the claim in O.P.No.504 of 2006 against the owner and insurer of the car bearing No.AP 11 Q 4 under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act') on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-III Addl.Chief Judge, City civil Court, Hyderabad, (for short, 'Tribunal'), for compensation of Rs.10,00,000/- for the injuries sustained by him viz; fracture of both bones right forearm, fracture of 5th and 2nd metacarpal right, fracture of proximal phalanx 2nd finger right hand; fracture of distal phalanx thumb, right hand ulna etc., and underwent surgery as per evidence of P.W.3 Medical officer, in the motor accident on 30.01.2006 while he was proceeding on a scooter and reached near Elba Hotel, Saidabad, Hyderabad, due to the dashing of crime vehicle(car) by rash and negligent driving of its driver, on contest from the 2nd respondent-Insurer and the evidence on record, the tribunal granted compensation of Rs.3,30,000/- with interest at 7.5% p.a. with joint liability against both the respondents by its award dated 08.08.2016. Impugning the said quantum as utterly low, the injured-claimant preferred the present appeal with the contentions that the compensation awarded utterly low and the tribunal erred in deducting an amount of Rs.1,00,000/- saying that the claimant received the amount of Rs.1,00,000/- under the Mediclaim policy but the claimant took the said policy by paying separate premium for his personal benefit and the respondents herein no way concerned with the policy, that the tribunal not properly considered the earning capacity of the claimant, that the tribunal also not properly considered the permanent disability

and to apply multiplier method for calculating loss of earnings of the claimant, in fact, the tribunal has to adopt 16 multiplier as per the Second Schedule of Section 163-A of the M.V.Act, by taking earnings at Rs.10,000/- p.m. at least as the claimant is doing business, hence, to grant as prayed for by allowing the appeal. The learned counsel for the claimant reiterated the same during the course of hearing the appeal.

2. The 2nd respondent-Insurer, from the 1st respondent remained *ex parte* before the tribunal, even impleaded in the appeal served with notice, taken as heard since not turned up; submits that there is nothing to interfere with the award of the tribunal by this Court while sitting in appeal.

3. Heard and perused the material on record.

4. The tribunal in its finding from the evidence of P.Ws. 1 and 2 concluded in saying on issue No.1 that the accident was the result of the rash and negligent driving of the driver of the Car of the 1st respondent insured with the 2nd respondent. There are no cross-objections much less independent appeal by the Insurer, though as a respondent to the appeal any finding can be impugned though not entitled to a greater relief, but for to object for the quantum for any enhancement, over and above what was granted by the tribunal and to that extent to impugn any finding. It is the submission that there is contributory negligence on the part of the injured-claimant while proceeding on his scooter and it is not the sheer negligence of the driver of the car of the 1st respondent and the tribunal did not properly appreciate the same. Exs. A.1 and A.2 no doubt, corroborates the evidence of injured of the FIR registered against the driver of the car and police filed chargesheet against him. The injured claimant shown his age in the claim petition about 37 years but there is no age proof filed and as the claim is under Section 166 of

the M.V.Act, for a person between 36 to 40, the multiplier applicable is 15. The accident was dated 30.01.2006. The petitioner did not file any record showing his qualification or earnings or avocation much less to claim as a businessman. Even taken his earnings by estimation at Rs.3,400/-p.m. by the date of accident following the expression of the Apex Court in Latha Wadhwa vs. State of Bihar¹ a minimum of Rs.3,000/- to be taken with proportionate increase after that expression to the date of accident, so far as the tribunal held just to award Rs.3,00,000/- towards loss of earnings for the injuries and the pain and sufferance and the so called disability therefrom and in this regard, there is no basis to say 80%total disability functional much less effecting avocation of 80% even from said evidence of P.W.3 read with Ex.A.8 for not even disability certificate of Medical Board to give any credence and there is nothing to show any limb effecting functional disability. When such is the case, what the tribunal awarded in lumpsum, no way requires interference much less to adopt multiple method therefrom even for any percentage and thus so far as the said amount of Rs.2,00,000/- awarded, it no way requires interference including for the nature of the fractured injuries, any functional disability therefrom, pain and sufferance and loss of earnings.

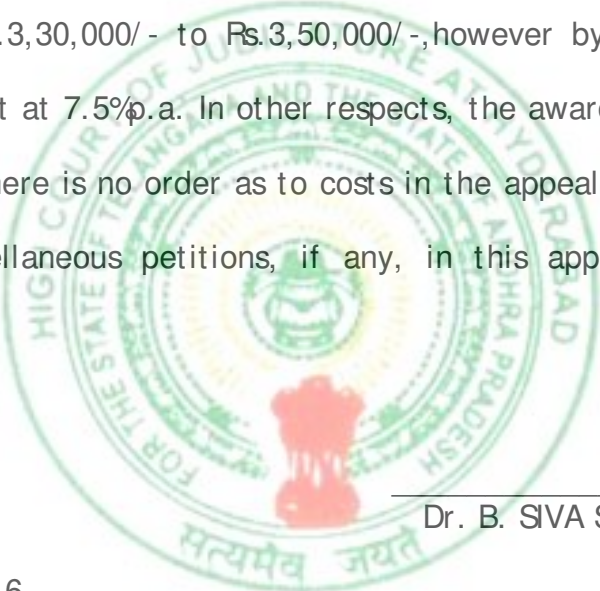
5. So far as medical expenses concerned, from Ex.A.9, the tribunal considered Rs.2,31,000/- shown incurred however, Rs.1,00,000/- mediclaim, as can be seen from the evidence of R.Ws. 1 and 2 with reference to Exs.B.3 and B.4 received for the self-same injuries and the tribunal rightly deducted said one lakh in awarding Rs.1,30,000/- and the same also no way requires interference but for to say the tribunal did not award separately attendant, transport charges and extra

¹ (2001) 8 SCC 197=AIR 2001 (SC) 3218

nourishment and for this even it is just to award for all Rs.20,000/- by enhancing the compensation from Rs.3,30,000/- to Rs.3,50,000/-.

6. The MACMAMP No.4477 of 2016 is filed by the injured claimant seeking to receive the I.T.returns for the years 2003-2004 to 2007-2008 as additional evidence for proper adjudication. In view of the fact that the permanent disability cannot be believed for no proof, the question of income of the injured much less to receive the material of I.T.returns does not arise, hence the petition is dismissed.

7. In the result, MACMAMP No.4477 of 2016 is dismissed and the appeal is allowed in part by enhancing the compensation granted by the tribunal of Rs.3,30,000/- to Rs.3,50,000/-, however by confirming the rate of interest at 7.5%p.a. In other respects, the award of the tribunal holds good. There is no order as to costs in the appeal. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date:17.10.2016
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