

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.204 of 2010

JUDGMENT:

The injured claimant of O.P.No.698 of 2007 maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.5,00,000/- for the accidental injuries sustained on 17.10.2006, while he was proceeding on his motor cycle bearing No.AP 28 AE 9508 at Rayagiri Village, alleging that due to the rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10Z 6829 of the 1st respondent, came in a wrong side at a high speed and dashed the motor cycle, as a result he sustained injuries including amputation above knee of his right leg besides multiple injuries including head injury and after contest by the respondent, the tribunal having held in the award dated 01.12.2008 that the accident was the result of rash and negligent driving of the driver of the APSRTC bus of the respondent, awarded compensation of Rs.1,68,990/- with interest at 7.5%p.a. and impugning the said quantum as utterly low, maintained the appeal.

2. The learned counsel for the appellant-claimant reiterated the grounds raised in the grounds of appeal vis-à-vis oral submissions that the tribunal gravely erred in not taking 70% permanent disability for amputation of the right leg as certified by Ex.A7-disability certificate issued by the Medical Board of the Gandhi Hospital, Hyderabad besides Exs.A4-Discharge summary and A3-MLC, which show mutation above knee joint that also deposed by PW.2-Doctor; not properly taken into consideration the multiplier method in arriving the compensation by adopting correct multiplier and taking correct multiplicand apart from no proper compensation awarded for the other injuries. Hence to allow the appeal, by considering the claim as prayed for or even more in arriving just compensation.

3. Whereas, it is the submission of the learned counsel for the APSRTC that but for no cross objections to reduce the compensation awarded by the tribunal, no way requires interference and there is contribution by the injured bike rider also resulting the accident that was not properly appreciated by the tribunal, hence to dismiss the appeal.

4. Heard and perused the material on record.

5. The evidence on record is that of PWs.1 and 2 and Exs.A1 to A8. Even though, the bus driver and eye witness

were not examined, Exs.A1-FIR and A2-Charge sheet are against bus driver. No doubt, the accident was occurred, while proceeding in opposite direction. The contentions in the counter of the APSRTC are that while bus was proceeding slowly negotiating curve, the injured at high speed dashed the bus near diesel tank. The tribunal came to the conclusion that there is no oath against oath from the respondent and held that accident was the result of the rash and negligent driving of the driver of the APSRTC bus and the respondent is liable to pay the compensation. Thus, so far as that finding, there is nothing to interfere.

6. Coming to the quantum of compensation, the age of the injured as per Ex.A7-disability certificate shown as 47 years by June, 2008 and accident was on 17.10.2006 more than one year after that, there from even taken his age about 46 years and the multiplier that is applicable to a claim under Section 166 of the Act as per Sarla Verma v. Delhi Transport Corporation¹ is correctly taken by the tribunal. From the percentage of disability-Ex.A7 speaks of 70%, the area of the stump available from thigh and to what extent amputation above knee not mentioned to consider 70% disability. A perusal of Ex.A7 photo shows, it is just above the knee joint, the amputation resulted. A perusal of

¹ 2009 ACJ 1298

Schedule-I item No.19 of the Workmen's Compensation Act shows for the amputation above knee where the stump is below the middle thigh, it is 60% Thus, the disability of the injured can be considered at 60% and what the tribunal taken of 30% is unjust, to enhance. Now, coming to the earnings of the injured, he claimed that he was working as labour contractor and no scrap of paper filed by him in that regard to believe. Thereby by following the guidelines of the Apex Court in Lata Wadhwa v. State of Bihar², in the absence of proof of earnings, minimum Rs.3,000/- to be taken and the expression is five years prior to the date of accident, Rs.3,500/- p.m. earning capacity of the injured can be taken and 60% disability to apply there from comes to $\text{Rs.3,500/-} \times 60/100 = 2100 \times 12 \times 13 = \text{Rs.3,27,600/-}$. For laceration on right parietal region (head injury) as noted in Ex.A3 and C.T.Scan from Ex.A4 show no any fracture from the head injury, even awarded Rs.20,000/- for the same, Rs.30,000/- even taken medical expenses from perusal of the bills claimed at Rs.79,000/- is with no basis as amputation is immediately after the accident from crush injury to the left leg and other injury supra of head injury, loss of earnings from 60% liability already taken into consideration from the date of accident even awarded

² AIR 2001 (SC) 3218

further of Rs.5,000/- and Rs.5,000/- towards attendant and transport charges. In total Rs.3,87,600/- is the just compensation and even considered any future prospects of any artificial limb, it is left open on producing proof about insertion of artificial limb to make a separate claim, as there is nothing to show any artificial limb was inserted and any expenditure incurred for that purpose.

7. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.1,68,990/- to Rs.3,87,600/-. However, any future requirement of any artificial limb, on filing of proof about insertion of artificial limb by personal appearance showing the same before the tribunal, a fresh claim is left open to that extent only. In other respects, the award of the tribunal holds good. No costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:17-11-2016

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