

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1141 of 2016

JUDGMENT:

The injured claimant maintained the claim O.P. No.237 of 2009 on the file of Motor Accidents Claims Tribunal-cum-Special Sessions Judge for trial of SCs & STs cases-cum-Additional District and Sessions Judge, Anantapur, (for short 'the Tribunal') under Section 166 M.V Act for the injuries sustained in the accident dated 27.10.2007 and claimed for compensation of Rs.5 lakhs and the Tribunal awarded compensation of Rs.1,60,000/- with interest at 7.5% per annum fixing joint liability against respondents 1 and 2 and dismissed the appeal against 3rd respondent—APSRTC. Impugning the same, the injured claimant filed the present appeal contending that the quantum of compensation granted by the Tribunal is utterly low.

2) M.A.C.M.A. M.P. No.851 of 2011 is filed to condone the delay of 69 days in filing the appeal and the delay is condoned subject to condition that the petitioner is not entitled to interest on the enhanced amount but from today.

3) Heard learned counsel for appellant/ petitioner and learned standing counsel for 2nd respondent—insurance company. Respondent No.1—owner of the vehicle remained *exparte* before the Tribunal and failed to attend in the appeal, hence taken as heard. Respondent No.3—APSRTC remained *exparte* before the Tribunal and even impleaded in this appeal, dismissed for default, which is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao***^[1] and the same is recorded.

4) The fact that the injured sustained injuries in the motor accident dated 27.10.2007 due to the rash and negligent driving of the driver of the bus of 1st respondent hired with 3rd respondent insured with 2nd respondent is proved from the award of the Tribunal and the said finding of the Tribunal is not challenged by any cross objections and for this Court while sitting in

appeal there is nothing to interfere. Coming to the quantum of compensation, the evidence of PWs.2 and 3—Dr.M.Athamaram and Dr.C.Sanjeevaiah respectively coupled with Ex.A6—disability Certificate issued by medical board, shows that the claimant sustained 50% permanent disability. Thereby, this Court directed the personal appearance of the injured and the injured appeared personally in the presence of counsel and this Court observed that his left leg suffered from the crush injury below knee with mal-union and that he is limping and not able to walk freely. Admittedly, at the time of accident, the injured was aged 16 years. Taking into consideration of the fact that though there is no permanent disability of 50% from the evidence of PW.3 with reference to Ex.A6 and which is not proved, this Court observed 30% permanent disability and the injured is not able to undertake heavy hard work for life long but for any availability of desk work to survive. However, the so-called salary certificate is rightly not believed under Ex.A3, therefore, the same is not taken into consideration for no proof. As per ***Latha Wadhwa vs State of Bihar***^[2] in the absence of proof of earnings, Rs.3,000/- per month is to be taken as the accident occurred on 27.10.2007, which is nearly 6 ½ years after the expression, proportionate increase of Rs.3,600/- per month is to be taken and if 30% therein comes to Rs.1,080/-, the loss of future income comes to Rs.2,20,320/- (Rs.1,080/- X 12 X 17). Apart from it, Rs.79,680/- towards pain and sufferance to the multiple injuries, medical expenses, extra nourishment, attendant charges, transport charges and loss of earnings during treatment, in all it comes to Rs.3,00,000/- to which the injured is entitled to.

5) Accordingly and in the result, the appeal is partly allowed enhancing the compensation from Rs.1,60,000/- to Rs.3,00,000/- with interest at 7.5% per annum from the date of petition till the date of realization. However, the claimant is not entitled to interest on the enhanced amount but from today. In other respects the award of the Tribunal holds good. It is needless to say from the latest three Judge bench expression of the Apex Court in ***Managing Director, KSRTC vs New India***

Assurance Company Limited^[3] that the owner, insurer and RTC are jointly liable for the insurer to indemnify for the policy in force. The insurer—
2nd respondent to the appeal is directed to deposit the balance amount within one month from the date of receipt of the order, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in **Lehru** (supra) **Nanjappan** (supra) that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit in bank to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as the M.V Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimant, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. No order as to costs.

6) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.26.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) AIR 2001 SC 3218

[\[3\]](#) 2015 (3) SCC 679