

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4590 of 2008

JUDGMENT :

The injured-claimant, who maintained O.P.No.1954 of 2003 on the file of Motor Accident Claims Tribunal (VIII Additional District Judge), Nizamabad, under Section 166 of M.V.Act., for a compensation of Rs.10,00,000/- against the owner and insurer of lorry bearing No.AP 25 T 5221 for the injuries sustained in the motor accident dated 06.10.2003 with averments that on the said date while he was proceeding on his scooter bearing No.AP 25 D 771 at about 7.30 p.m. at Sarangapur, the crime lorry of the 1st respondent dashed against his scooter and then to an auto rickshaw bearing No.AP 25 U 4686 and therefrom he sustained injuries and was taken to Government Hospital, Nizamabad and to SVR Hospital, Hyderabad and then to NIMs, Hyderabad, where he was treated as inpatient from 07.10.2003 to 06.11.2003. The evidence of PW.3-Dr. Bhargav Sandeep of CMC Hospital, Dichpally, shows that he admitted injured-PW.1 on 06.10.2003 at 9.00 p.m. into his hospital. No doubt, as pointed out by the learned counsel for respondent No.2-Insurer, the claim petition averments shows as if he was admitted in Government Hospital, Nizamabad, and then shifted to SVR Hospital, Hyderabad and the evidence of PW.3 says after the accident at about 7.30 p.m. the injured was brought to his private hospital. There is some contradictory version in this regard. No doubt, it is further brought to

the notice of the Court from the cross-examination of PW.3 that he did not mention in Ex.A.3-wound certificate that the injured-petitioner sustained injuries in the motor accident. He did not even mention that the injury No.1 is a fracture. He did not take X-ray. He did not even mention any identification marks of the injured in the record and also about the age of injuries. It is the submission of learned counsel for the insurer therefrom that the injured sustained injuries somewhere and the present crime is made by implicating the owner and insurer of the lorry. Undisputedly, if the scooter is covered by the Insurance, all the injured claims covered under the personal accident claim, but his remedy is else where. However, as per the averments the lorry dashed his scooter from which he sustained injuries. There is no crime report of the occurrence, but for on next day. However, the evidence of PW.4-Dr.R.Srikanth of NIMs Hospital, Hyderabad shows that the petitioner was admitted as inpatient in NIMs Hospital on 07.10.2003 i.e., on the next day and operation was conducted on 08.10.2003 and the petitioner was discharged on 06.11.2003 and there was follow up treatment advised from his Ex.C.1-discharge summary and as per Ex.A.5-case sheet there are four injuries viz., laceration anteromedial aspect of right shoulder extended into axilla 15 c.m., compound fracture of both bones of right leg in 2/3rd with avulsion of skin and exposed fracture site, laceration injury on right front temporal region and tenderness of right chest wall. By taking consideration of these injuries and by believing the evidence of PW.4 and PW.3, what is

discussed supra with reference to Ex.A.3-wound certificate, Ex.A.21-case sheet, Ex.A.5-discharge record and Ex.C.1-discharge summary, the Tribunal awarded compensation of Rs.90,000/- with interest at 7.5% p.a. by the impugned order dated 24.06.2008 in O.P.No.1954 of 2003.

2. The contentions in the grounds of appeal are that the Tribunal gravely erred in not taking into consideration the discharge certificate issued by PW.2, who is one of the members in Medical Board, by name Dr.V.Akhilesh, what he deposed of 75% disability.

3. Even a perusal of this Ex.A.14, there is nothing reflects to consider 75% permanent disability, but simply mentioning about the fractures as mal-united that is of right limb. There is no mention whether the disability is even to the limb or the whole body affected the functions to consider as functional disability, but for under Women Development and Child Welfare order dated 15.06.1992, the said certificate is issued, it is therefrom in the course of hearing the personal appearance of injured-appellant sought for. Today the injured is appeared before the Court and his right upper limb almost impaired. Thereby taking consideration of the same, an amount of Rs.90,000/- awarded by the Tribunal is enhanced to Rs.2,00,000/- (Rupees two lakhs only) with same interest.

4. Accordingly, the appeal is allowed in part by enhancing the compensation from 90,000/- to Rs.2,00,000/- with the same rate of

interest from the date of claim till realization. Rest of the terms of the award of the Tribunal holds good.

5. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

21st September 2016

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