

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
MACMA MP No.3767 of 2016 in MACMA No.4388 of
2008 & M.A.C.M.A. No.4388 of 2008

COMMON ORDER :

The injured claimant of O.P. No.635 of 2006 maintained the appeal under Section 166 of the Motor Vehicles Act for a compensation of Rs.6,50,000/-, for the injuries said to have been sustained in the motor accident dated 12.05.2006 against the owner and insurer of the D.C.M van bearing No.AP 29 T 410 alleging that at the outskirts of Bandaravirala village while the petitioner was proceeding on his motor cycle bearing No.AP 9 AH 2814 due to the rash and negligent driving of the driver of the vehicle of the 1st respondent supra is sustained the injuries and despite treatment with memory loss and right portion particularly of the right hand is paralyzed with no movements or sense and totally dependant on the family members for his survival, having been totally impaired of his avocation and thereby entitled to the compensation. The 2nd respondent insurer for the 1st respondent exparte, filed counter despite the involvement of the vehicle in rash and negligent driving of the driver, insurance of the vehicle and liability, it is therefrom in the course of the trial from the evidence of P.W-1 insurer, P.W-2, the doctor with reference to Exs.A-1 to A-4 and also P.W-3 alleged eye witness to the accident and from

respondents 1 and 2 that is the owner and insurer respectively the Tribunal having held that the accident was result of the rash and negligent driving of the driver of the crime vehicle of the 1st respondent-insured with 2nd respondent but for to say the driver having L.M.V non-transport and no valid licence to drive the vehicle, goods carriage, fixed the compensation of Rs.1,32,000/- with interest at 7.5% p.a. from the date of claim petition till realization subject to pay and recovery.

2) Having so observed in para No.14 though not reflected in para No.15, issue No.3, but for clearly in the decree clause-2. The contentions of the learned counsel for the appellant-claimant impugning the award of the Tribunal dated 02.06.2008 mainly on the quantum of compensation also filing petition to receive additional documents under Order XLI Rule 27 C.P.C is that the petitioner is suffering from seizures and pits frequently and cannot independently did any work and move out and it is a permanent partial total disability throughout the life, having been suffered his avocation and the Tribunal ought to have awarded the claim as prayed for, hence to allow the appeal.

3) The 2nd respondent-insurer to the appeal from 1st respondent remained exparte even before the Tribunal, supports the award of the Tribunal, there is nothing to interfere and also by oral saying no grounds to receive the

additional evidence documents. The additional evidence documents placed reliance are C.T scan subsequent to the disposal of the O.P. dated 02.06.2008 which reflects the old depressed fracture of frontal bone in the midline and to the right involving right frontal sinus with diffuse cerebral atrophy which is mentioned card of Orange Hospital showing he was inpatient for three days between 7 to 10.11.2011 having been admitted under general physician and scan report shows a hypodense lesion seen in the right frontal lobe in territory of right ACA is in keeping with infarct and there is likely possibility of thrombus in distal segment of right ACA. The additional bills are filed, shows about Rs.3,000/- or so.

4) The evidence on record before the Tribunal besides the additional evidence supra, since taken on record for appreciation, by allowing the application in M.A.C.M.A.M.P. No.3767 of 2016, disclosed from the evidence of P.W-2 of Aware hospital, Dilsukhnagar claimed as Neuro Surgeon that the injured on the date of admission on 17.05.2006 of the alleged accident dated 12.05.2006, was noticed not in conscious condition and with infected wound on the right frontal region with underline impression of depression fracture and was already operated in Osmania General Hospital and thereby he was admitted in intensive care by keeping in I.C.U and Tracheostomy done by E.N.G surgeon on his

advise and the patient is recovered and infected wound was treated and was discharged on 01.06.2006 in a stable condition and later under regular follow up and there is a memory disturbance. In the cross-examination, he deposed that he did not conduct any neuro surgical procedure and there are no any unhealed external injuries. From this evidence of P.W-2 from the above practically, there is nothing as after recovery he was discharged and operation done already by Osmania General Hospital. It is there from the Tribunal awarded by considering the grievous injuries and period of treatment viz., frontal depressed fracture, associated with defused brain injury and intra ventricular bleeding. Now, coming to the additional record from the years 2009 and 2011 of the additional evidence received that of Orange Hospital with C.T. scans of Konark Diagnostic and D.B.R diagnostic centre respectively, still there is a complication from the brain injury of possibility of suffering pits and seizures and it requires future treatment also now and then. Apart from physical examination in the Court, the right hand functional movement almost restricted with 90% disability, practically he is unable to lift even a book with right hand when examined in the presence of both the counsel, to subserve the ends of Justice, the compensation of Rs.1,32,000/- requires enhancement to Rs.2,50,000/-.

5) In the result, the appeal is partly allowed by enhancing the compensation to Rs.2,50,000/- from

Rs.1,32,000/-. The award of the Tribunal in all other respects holds good. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23.08.2016
Ksh

ADDITIONAL DOCUMENTS MARKED

For petitioner:

Ex.A-12: Original C.T scan of brain with film, dated 12.02.2009

Ex.A-13: Original Discharge Summary of Sreshta Orange Hospitals, dated 10.11.2011

Ex.A-14: Original NCCT and CECT of the brain with film (images) dated 07.11.2011

Ex.A-15: Dual Slice Spiral CT of Orange Hospital, dated 07.11.2011.

Ex.A-16: Original prescription of Sreshta Orange Hospitals, dated 10.11.2011

Ex.A-17: Bunch of Original bills.

Dr. B. SIVA SANKARA RAO, J

23.08.2016
Ksh