

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
MACMA MP No.2589 of 2010 in MACMA No. 861 of
2016 & MACMA No. 861 of 2016

COMMON ORDER :

Heard the learned counsel for the petitioner and Sri Ravi Shankar Jandhyala learned counsel appearing for the 2nd respondent. Delay of 864 days in filing the appeal is condoned subject to condition that the petitioner is entitled interest on enhanced amount from today only.

2) At request of both sides the appeal is taken up for hearing. The 1st respondent owner of the vehicle remained exparte before the Tribunal and even impleaded and dismissed for default no way fatal to the appeal vide **Meka Chakra Rao v. Yelubandi Baburao**^[1] and the same is recorded.

3) The injured/claimant/appellant filed O.P. No.2413 of 2005 under Section 166 of the Motor Vehicles Act claiming compensation of Rs.2,50,000/- for the injuries sustained in the motor accident dated 31.03.2005 due to alleged rash and negligent driving of the auto bearing chasis No.FFC 232950 and Engine No.RSC 75910 of 1st respondent/insured with 2nd respondent as per Ex.A-12 policy saying while he was returning home after completion of the work in auto, the auto of the 1st respondent supra coming from Hyderabad in a rash and

negligent manner dashed the auto in which the petitioner was traveling due to which he sustained multiple injuries, so also the other passengers and police registered the Crime No.61 of 2005 against the driver of 1st respondent that he was treated in Osmania General Hospital as inpatient and discharged on 23.08.2005. In proof of the claim he relied on Exs.A-1 to A-12 including Ex.A-1 F.I.R and Ex.A-2 charge sheet against the driver of the 1st respondent. The Tribunal having held the accident was result of rash and negligent driving of the driver of the 1st respondent from evidence of the injured claimants with reference to Ex.A-1 and Ex.A-2 awarded compensation of Rs.70,000/- with interest at Rs.6% p.a. Aggrieved thereby the present appeal is filed with contentions that despite there is evidence including from Ex.A-8 disability certificate and of P.W-2 Doctor of Rajyalakshmi Hospitals, Hyderabad for the mal-union and shortening of 2 cm of the right lower limb, what the Tribunal awarded is utterly low and the interest awarded is also utterly low and hence to allow the claim as prayed for.

4) Whereas it is the contention of the learned counsel for the insurer that the treatment was undergone in Osmania General Hospital and there is no basis for saying undergone treatment in Rajyalakshmi Hospital and there is no basis for the disability certificate, hence to dismiss the appeal.

5) As per Ex.A-3 discharge summary of Osmania General Hospital and Ex.A-4 discharge card of Rajyalakshmi Hospital, where P.W-2 treated the injured after discharge from Osmania General Hospital supported by Exs.A-5 and A-7 bills and Ex.A-6 prescription and Ex.A-9 X-rays. It shows he was treated in the Rajyalakshmi Hospitals, Vanasthalipuram. There is nothing even from the cross-examination P.W-2 to disbelieve the evidence. No doubt it is a disability certificate issued by P.W-2 and any of the medical bill. The Court called for the personal appearance of the injured claimant, who appeared today there is bending below knee of the lower limb with shortening with what P.W-2 mentioned of nearly 2 cm apparently correct from the physical verification and petitioner is unable to move freely though without stick supporting, he is moving and there is basis for saying the disability is nearly 45% from the Grade III compounding comminuted fracture of right lower limb with mal-union and from the shortening outcome of the comminuted fracture despite there were three operations conducted in Osmania General Hospital as can be seen from Ex.A-3 discharge card also as inpatient and latter in the private hospital as inpatient from 03.09.2005 to 06.09.2005 with operation on 04.09.2005. The age of the injured claimant shown in the claim petition is about 25 years. His physical appearance before the Court shows more than 40 years even taken, the age of

the injured at the time of accident i.e., 10 years back about 30 years, the multiplier applicable is 16. The earnings of the injured as on the date of accident can be taken at Rs.3,400/- p.m. and 40% therein comes to Rs.2,61,120/- (Rs.1360x12x16). Apart from it, medical expenses and treatment, the bills filed for Rs.13,500/-, loss of earnings during the period of treatment for two months for Rs.7,000/-, extra nourishment, transport charges, attendant charges even awarded Rs.7,400/- it comes to Rs.2,89,000/- (rounded) is the just compensation though the total claim is made for Rs.2,50,000/-.

6) In the result, the appeal is allowed enhancing the compensation from Rs.70,000/- to Rs.2,89,000/- subject to payment of deficit Court fees on the enhanced amount and while confirming the rate of interest at 6% p.a. on the original amount of Rs.70,000/-, on the enhanced amount the rate of interest is enhanced from 6% p.a. to 7.5% p.a. from today till the date of realization. Rest of the terms of the award of the Tribunal holds good. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

22.01.2016
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