

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4756 of 2008

JUDGMENT :

The injured-claimant maintained O.P.No.337 of 2006 on the file of XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad, (for short, 'the Tribunal'), under Section 166 of M.V.Act., for a compensation of Rs.3,00,000/-, since awarded by the Tribunal, among three respondents, only against owner and insurer of the lorry bearing No.AP 31 T 4117 (respondent Nos.1 and 2 respectively) by exonerating APSRTC-respondent No.3 for Rs.77,500/- with interest at 9% p.a. on 18.09.2008. Impugning the said quantum as maintained utterly low by showing APSRTC also as respondent No.3 besides the owner and insurer of lorry as respondent Nos.1 and 2, the present appeal is preferred by the claimant.

2. The contentions in the grounds of appeal are that the Tribunal gravely erred in not considering the pain and sufferance from the nature of injuries sustained by the claimant and the evidence of PW.2-Doctor including the medical expenses incurred from the bills produced and thereby sought for allowing the claim as prayed for.

3. It is the submission of the learned counsel for respondent No.3 that the Tribunal given a finding of the accident was the result of the rash and negligent driving of the driver of lorry of the claim petition-respondent No.1 by exonerating respondent No.3. So far as appeal is concerned, there is nothing to interfere, much less to mulct with any

liability against respondent No.3. Respondent No.2-insurer failed to attend and respondent No.1 even remained ex parte before the Tribunal, thereby taken as heard.

4. Perused the material on record.

5. The finding of the Tribunal on the rash and negligent driving of the driver of lorry of respondent No.1 no way requires interference, but for the quantum, if any, against respondent No.1 and 2 to the appeal. The evidence of PW.2-Doctor recorded on commission clearly shows the claimant was admitted on 02.06.2004 in the hospital with head injury of loss of consciousness and vomiting and she was in drowsy and MRI to the brain and CT scan done and found there is a contusion of right frontal low and left superior cerebellar low and treated in the hospital and discharged on 18.04.2004 and by the time of discharge her condition was stable and she was all right. It is further stated that later she joined in the hospital on 05.09.2004 with complaint of backache and numbness, which were not earlier complaints, and MRI of limbs reveal L4-L5 discectomy and operation was conducted on 07.09.2004 in this regard and she was discharged on 15.09.2004 and it is deposed very clearly in the cross-examination that at the time of discharge her condition was stable with no more obligations, but for advice to undergo medication for further two years period. This is what the evidence on record regarding the injuries sustained by the claimant. So far as the medical bills and treatment are concerned, PW.2 deposed that these are the bills issued by the

Hospital. Among Exs.A.1 to A.8, Ex.A.2 bill shows total amount incurred is Rs.34,358/-, which includes the balance paid after adjustment of advance and Ex.A.3 shows Rs.32,754/- and refund of the balance after adjustment from out of advance amount. Thus, both under Exs.A.2 and A.3, an amount of Rs.67,112/- incurred by the claimant. Further, Ex.A.4 is not related to Yashoda Hospital that too from the evidence of PW.2 and discharge summary that itself shows only discharged on 15.09.2004 to give any credence of incurring Rs.20,000/- thereunder, thereby that cannot be considered. Ex.A.5- receipt is part of the total amount incurred by the first bill as it is dated 02.06.2004 so also Ex.A.6 dated 10.06.2004. Now coming to bill dated 25.11.2004 shows Rs.554/- amount incurred and that should be added, it comes to Rs.67,666/-. Further, bills under Exs.A.7 to A.9 no way supported by any prescriptions of the Yashoda Hospital relied thereby. Thus, the total medical expenses incurred by claimant comes to Rs.67,666/-. Besides that for the pain and sufferance from the injury sustained, an amount of Rs.25,000/- is awarded and Rs.5,000/- towards transport charges and attendant charges, in all it comes to Rs.97,666/-, rounded to Rs.1,00,000/-, which is the just compensation. So far as the interest is concerned, the Tribunal awarded 9% per annum, which is excessive and contrary to the settled expression of the Apex Court in **Tamilnadu State Road Transport Corporation**

v. Rajapriya¹, thereby the same is reduced to 7.5% p.a. Thus, the claimant is awarded an amount of Rs.1,00,000/- (Rupees one lakh only) along with interest at 7.5%

6. Accordingly, the appeal is allowed in part by enhancing the compensation from Rs.77,500/- to Rs.1,00,000/- along with interest at 7.5% per annum.

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

22nd September 2016

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Dr. B. SIVA SANKARA RAO, J



¹ 2006 ACJ 1441