

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.708 OF 2008

JUDGMENT:

The injured claimant maintained the claim against the owner and insurer of the Ambassador car bearing No.AP 12 T 3718 under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Addl. Metropolitan Sessions Judge, Hyderabad (*for short, 'Tribunal'*), for compensation of Rs.5,00,000/- for the fracture injuries sustained by him in the motor accident on 07.01.2005 while the claimant was proceeding on his cycle caused by the rash and negligent driving of the driver of the Ambassador car. The tribunal after contest and from the evidence on record, granted compensation of Rs.75,000/- with interest at 6% p.a. with joint liability against both the respondents by its award dated 27.10.2007. Impugning the said quantum as utterly low, the injured claimant preferred the present appeal.

2. The learned counsel for the claimant reiterated the same during the course of hearing and further submitted that the tribunal ought to have considered the evidence of P.W.2 with regard to the shortening of the right leg and 35% permanent partial disability but 15% taken by the tribunal is not just, hence to award as prayed for and also by enhancing the rate of interest.

3. The 2nd respondent-Insurer, from the 1st respondent remained *ex parte* before the tribunal, even impleaded in the appeal, not turned up taken as heard, submitted that there is nothing to interfere with the award of the tribunal by this Court while sitting in appeal and perused the material on record.

4. There is no disability certificate issued much less by any Medical Board. P.W.2 R.Siva Prasad, Professor and Orthopedic Surgeon at Osmania General hospital, is not even the doctor who treated the claimant but for deposed with reference to the case sheet of earlier doctor of Osmania General Hospital by name Dr.G.R.K.Reddy who originally treated the claimant. Further what he deposed is that as on the date of deposition there is 35%permanent partial disability basing on the shortening of the leg nearly of 3cm but there is no basis much less any photo and there is no observation of the tribunal for P.W.1's evidence of any shortening and it is the tribunal, having fresh in mind all the facts, taken 15%permanent disability saying 35%as excessive.

5. Now coming to the earnings of the injured, the tribunal taken Rs.15,000/- per annum. The accident was dated 07.01.2005. He was aged 49 years as per Ex.A.7 LMV Transport driving license as born on 01.07.1956 and the multiplier that is applicable is 13, for the claim is under Section 166 of the M.V.Act, as per the expression of the Apex Court in Sarla Varma v. Delhi Transport Corporation¹. When there is no proof of income, as per the expression of the Apex Court in Latha Wadhwa vs. State of Bihar² Rs.3,000/- to be taken and even the same is taken as the accident took place 4 years after the accident, even taken Rs.3,400/- p.m. with proportionate increase if 15% therein taken, it comes to Rs.3,400/- x 15/ 100 x 12 x 13=Rs.79,560/- apart from it for compound fracture, the tribunal simply taken Rs.25,000/- but it requires to be enhanced to Rs.30,000/- and taken the other sums awarded by the tribunal of Rs.15,000/- towards medical expenses, Rs.8,000/- towards loss of earnings and towards transport charges and attendant charges even awarded of Rs.2,440/-, it comes to Rs.79,560/-+Rs.55,440/-

¹ 2009 ACJ 1298

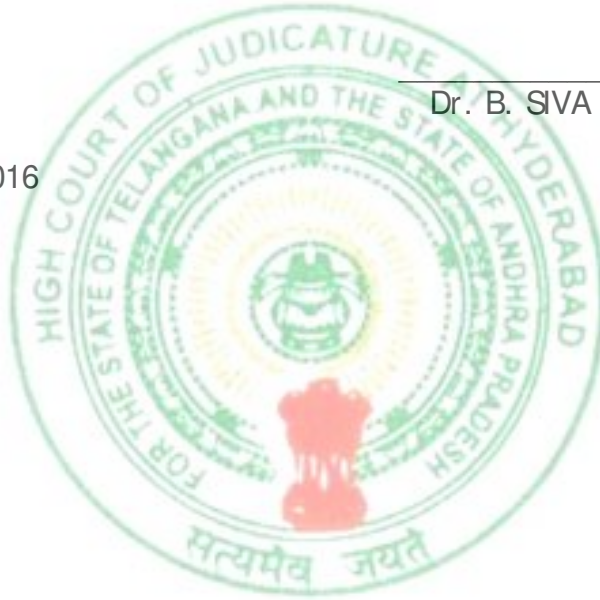
² (2001) 8 SCC 197=AIR 2001 (SC) 3218

=Rs. 1,35,000/- is the just compensation to be awarded by enhancing the rate of interest from 6% p.a. to 7.5% p.a. as per three judge Bench expression of the Apex Court in *Rajesh Vs. Rajbir Singh*³.

6. Accordingly and in the result, the appeal is allowed in part by enhancing the compensation of Rs. 75,000/- awarded by the tribunal to Rs. 1,35,000/- and also by enhancing the rate of interest from 6% p.a. to 7.5% p.a. from the date of petition till realization. In other respects, the award of the tribunal holds good. No costs. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.09.2016
Vvr



³ (2013) ACJ 1403=(2013) 9 SCC 54,