

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.1082 OF 2004

JUDGMENT:

The injured-claimant (APSRTC driver) in O.P.No.55 of 1993 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-I Addl. District Judge, Nalgonda district, (*for short, 'Tribunal'*), maintained u/s. 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), claiming compensation of Rs.2,50,000/- (Rupees two lakh fifty thousand only) against the owner and Insurer of the crime lorry bearing No.WB1 5951(R.1 and R.2) and APSRTC(R.3) for the injuries sustained in the motor accident dated 06.01.1993 while in duty, from the alleged rash and negligent driving of the driver of the crime lorry of the 1st respondent insured with the 2nd respondent, the tribunal since granted Rs.1,00,000/-, by the award dated 23.01.1998 against the respondents 1 and 2, impugning the said quantum as utterly low maintained the appeal in C.M.A.No.2234 of 1999 before this Court but for insufficiency of evidence, this Court remanded the matter by order dated 27.06.2003 for fresh disposal by restoration of the matter before the trial Court and the tribunal after recording further evidence disposed of afresh by awarding compensation of Rs.1,00,000/-+ additional amount of Rs.25,000/-= Rs.1,25,000/-, with interest at 9% p.a. by its award dated 08.10.2003 and impugning the said quantum of compensation as utterly low maintained the present appeal with the contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the petitioner/appellant in nut shell are that the tribunal ought to have considered the factum of the petitioner sustained more than 50% permanent disability that is also certified by the medical officer of the APSRTC besides the Government doctor certified the disability of permanent nature more than 40% that is proved from the evidence apart from the fact of he was compulsorily retired from the service since unfit to be a driver due to the restriction of the functional movements of the right knee from the fracture to the

upper 1/3rd of right lower limb and thereby sought for allowing the appeal by awarding compensation as prayed for of Rs.2,50,000/-.

2. Whereas, it is the contention of the learned counsel for the 2nd respondent-Insurer that the award of the tribunal holds good and for this Court while sitting in the appeal there is nothing to interfere and while making compulsory retirement even under Ex.A.5 retirement order by the APSRTC, lumpsum compensation therefrom was provided and the petitioner received that also to be taken into consideration and thereby sought for dismissal of the appeal by reducing the rate of interest from 9% p.a. awarded is excessive for which no cross-objections even required.

3. Heard and perused the material on record.

4. The record clearly establishes that the petitioner sustained permanent disability of 50% and the record further establishes that he was while serving as driver met with the accident due to the rash and negligent driving of the driver of the crime lorry of the 1st respondent undisputedly insured with the 2nd respondent and from the injuries and from the disability with restrictive functional movements of the right lower limb he was declared as unfit and made to retire compulsorily that by payment of some compensation by the APSRTC(R.3). Once these facts are not in dispute and the salary certificate shows he was earning Rs.2,995/- gross as on the date of accident in June, 1993 and even taken net salary for computing of Rs.2,800/-, 50% disability therefrom comes to Rs.1400/- and his age from the certificate issued by the hospital clearly speaks 45 years above and even taken multiplier for a person aged about 45 years i.e. 46 to 50 is 13, 41 to 45 is 14 thereby at 13.05, it comes to Rs.2,26,800/-, however, once he received from the compulsory retirement lumpsum compensation 25% permanent disability as contended by the learned counsel for the Insurer that also required to be taken into consideration and what is the

compensation to be taken into consideration to award is for the 50% permanent disability for nothing to show that he is 100% functional disability for no other avocation even though not as a driver.

5. Having regard to the above and from the nature of injuries sustained, period of treatment under gone, expenditure incurred, loss of earnings, medical expenses, transport and attendant charges, it is just to award a total compensation of Rs.2,00,000/- enhancing from Rs.1,25,000/- covered by the impugned award of the tribunal however, by reducing rate of interest from 9% to 7.5% throughout.

6. In the result, the appeal is allowed in part enhancing compensation from Rs.1,25,000/- as awarded by the tribunal to Rs.2,00,000/- however, by reducing rate of interest from 9% to 7.5% throughout. The 1st and 2nd respondent are directed to deposit the amount within one month from the date of receipt of this order. Failing which, the appellant/petitioner shall execute and recover from them. The appellant/petitioner is permitted to withdraw the entire amount. Rest of the award holds good. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:10.06.2016

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