

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.2215 of 2004

JUDGMENT:

The injured-claimant in O.P.No.419 of 1998 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-II Addl. District Judge-Ranga Reddy district, (*for short, 'Tribunal'*), maintained u/s. 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), claiming compensation of Rs.3,50,000/-(Rupees three lakh fifty thousand only) against the owner and Insurer of the crime lorry bearing No.MH29 6348 for the injuries sustained in the motor accident, dated 06.10.1995, where said lorry dashed against the scooter bearing No.AP28 G 5610 in which he was the pillion rider being riden by his friend while proceeding from Malkapur to Tandur after crossing Tandur, for the tribunal since awarded compensation of Rs.2,02,400/- (Rupees two lakhs two thousand and four hundred only) with interest at 9% p.a. by order dated 17.07.2003, impugning the said quantum as utterly low, maintained the appeal with the contentions in the grounds of appeal vis-à-vis the appeal submissions that the tribunal ought to have considered the permanent disability sustained by the petitioner and ought to have awarded the compensation as prayed for even by considering the nature of the injuries sustained, period of treatment undergone, loss of earnings, medical and other expenses incurred and post-injury consequences. Hence to allow the appeal.

2. Whereas, it is the contention of the learned counsel for the 2nd respondent-Insurer that but for no cross-objections what the tribunal awarded is excessive and exorbitant to reduce for the treatment undergone is in the Government hospital either Osmania Medical hospital or Gandhi Hospital on free of costs. Hence to dismiss the appeal but for to reduce rate of interest from 9% to 7.5% for which even no cross-objections are required to exercise the discretion under Section 171 of the M.V.Act.

3. Heard and perused the material on record.

4. The fact that the petitioner sustained grievous injury to the right leg (tibia) and admitted as in-patient and undergone treatment either as in-patient or out-patient from 06.10.1995 intermittently from 25.04.2000 is proved from the medical record including either of Osmania or of Gandhi Hospitals including the final operation conducted by Apollo hospital covered by the bunch of bills in this regard of Rs.77,434/-(Rupees seventy seven thousand four hundred and thirty four only) and shown from evidence of P.W.2 doctor M.Harisharma, to prove the final opinion issued by Osmania hospital covered by Ex.A.4 of 25% permanent partial disability. These are the facts which are not in dispute. In fact, on perusal of the record shows there is only one bone i.e. tibia fracture and not compound fracture of both bones, much less any comminuted fracture by fragmentation of any area of the bone for saying there is any shortening of the right leg thereby from the evidence of P.Ws. 2 and 3 to believe much less outcome of mal-union that too, the evidence of P.W.2 shows only of the permanent partial disability and not disability of total permanent in nature.

5. Having regard to the above, it is proved as total permanent partial disability even as 25%, to adopt multiplier method from taking the earning value, as date of accident 06.10.1995 for the same is not the case thereby the tribunal taken the lumpsum amount. On perusal of the record, it justifies to enhance the same from Rs.2,02,400/- to Rs.2,50,000/- only however by reducing the rate of interest from 9% to 7.5% p.a.

6. In the result, appeal is allowed in part by enhancing the compensation granted by the tribunal of Rs. 2,02,400/- to Rs.2,50,000/- (Rupees two lakh fifty thousand only)- by reducing the rate of interest from 9% to 7.5% p.a. from the date of petition till realization. The respondents shall deposit said amount within one month from the date

of receipt of this order, failing which the claimant can execute and recover. On deposit or execution, the appellant/claimant is permitted to withdraw the amount. Rest of the award holds good. There is no order as to costs. 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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