

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.4342 of 2004

ORDER:

The injured claimant in O.P.No.480 of 2002 on the file of Chief Judge, City Civil Court, Hyderabad, impugning the award dated 24.02.2004 granting compensation of Rs.4,51,777/- with interest at 12%p.a. maintained the appeal on the quantum as utterly low against the owner and insurer of the Tata Sumo bearing No.AP 28H 6588.

2. The 1st respondent-owner of the vehicle remained *ex parte* before the trial Court. The 2nd respondent-insurer contested the matter on various grounds.

3. The manner of accident was while the injured and another person were proceeding on a two wheeler at Golnaka bridge near Kachiguda, from the crime Tata Sumo vehicle coming in opposite direction to their two wheeler, the accident occurred at the mid night on 31.12.2001. The other person died and he sustained injuries.

4. Though the 2nd respondent-insurer contested by saying there is a contribution to the accident by the deceased and the injured, the trial Court from Ex.A1-F.I.R. and Ex.A2-charge sheet held that the accident was the result of rash and negligent driving of the driver of Tata Sumo insured with 2nd respondent. Injured claimed that he was earning Rs.5,800/- p.m. as a courier

boy in serving courier of the Bank to various customers in twin cities. Ex.A12 is disclosing that he is only a courier server and not at all connected with the bank services and that is also the evidence of PW.3-Bank Manager. The trial Court held there from that there is no fixed income, thereby estimated as on the date of accident the earnings of the injured at Rs.3,000/- p.m. as just and reasonable. The permanent disability certificate issued by Yashoda Hospital covered by Ex.A11 coupled with Ex.A13 shows that the injured sustained 50-60% permanent disability.

5. This Court required the presence of the appellant(petitioner) and he appeared before the Court and claims that he lost his avocation of courier service and now working as a watchman in an apartment privately and suffering loss of earnings. He is not able to walk without stick support.

6. Even the prospective earnings including from such self-employment courier server taken as per the expression of the Apex Court in *Sarla Verma v Delhi Transport Corporation*¹, it can be arrived his earnings at Rs.4,500/- p.m. For 50% permanent disability taken there from it comes to Rs.2,250/- p.m. It is claimed of his age as 26 years but there is no proof of date of birth. If multiplier '17' though trial Court taken 16 as per *Sarla Verma (supra)*, it comes to Rs.2250/- p.m. x 12 x 17 = Rs.4,59,000/-. Apart from it, the claimant is entitled to Rs.1,00,000/- towards medical expenses, Rs.41,000/- towards

¹ 2009 ACJ 1298.

loss of earnings, attendant charges, transport charges and extra nourishment etc., though claimed of Rs.1,77,000/- towards medical expenses for there is no correlation from the bills i.e., from the fractured injuries to the right leg for no head injury. No doubt, the treatment shows intermittently for lengthy period. Thus, it is just to award a compensation of Rs.6,00,000/-, however by reducing the rate of interest from 12%to 7.5%

7. Accordingly and in the result, the appeal is allowed in part by enhancing the compensation from Rs.4,51,777/- to Rs.6,00,000/- however by reducing the rate of interest from 12% p.a. to 7.5% p.a. from the date of petition till realization. There is no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B.SIVA SANKARA RAO, J

Date:29-08-2016
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