

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.2837 OF 2011

IN/AND

MACMA No.317 OF 2016

JUDGMENT:

The appellant is the claimant in O.P. No.1 of 2005 on the file of III Additional District Judge (FTC) -cum- Motor Accidents Claims Tribunal, (for short, 'the Tribunal') Nizamabad, maintained the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.4,00,000/- for the injuries sustained in the motor accident dated 20.01.2004 alleging that due to rash and negligent driving of the first respondent of bike bearing No.AP-09-AP-558, insured with the second respondent covered by Ex.B.1 policy, and the Tribunal having heard from the contest by the second respondent/ insured and the first respondent remained ex parte, held that the accident was the result of rash and negligent driving of the bike rider and the respondents are jointly and severally liable. P.W.2 is the Doctor with reference to Ex.C.1 - Case Sheet and Ex.A.4 - Discharge Summary and awarded, in all Rs.80,000/- i.e. Rs.30,000/- for the pain and suffering including to the fracture injury and treatment as inpatient and for extra nourishment and medical expenses Rs.50,000/-; and now impugning the same the appeal is filed against the self same respondents with the delay condonation of 150 days mainly for the reason of financial difficulties and poverty.

02. Heard and delay condoned subject to condition of not entitled to the interest on the enhanced amount and the appeal is taken up for hearing.

03. Learned counsel for the appellant reiterated the above saying the Tribunal ought to have considered the disability as deposed by P.W.2 by applying multiplier method and no further amount was awarded towards attendant and transportation charges etc., besides loss of earnings.

04. Whereas the learned counsel for the insurer/ the second respondent contended that what the Tribunal awarded is excessive and there is no basis for Rs.50,000/- towards medical expenses even from the bills produced and thereby sought for dismissal but for cross objections to reduce, so far as the rate of interest awarded to 6% from the contention of the appellant to enhance 9% also the counsel for the

insurer submitted that the same is sustainable as per **Sarla Verma v. Delhi Transport Corporation**.

05. Perused the material on record.

06. On perusal of the evidence with the record that Ex.C.1 case sheet or Ex.A.3 – Out Patient Card or Ex.A.4 - Discharge Summary, there is nothing to show any permanent disability much less even partial, but for whisper in the evidence of P.W.1 as stray sentence as if there is oral, the disability assessed to 10 to 15%, it is to say as no basis of rightly concluded by the Tribunal so far as medical expenses of Rs.50,000/- claimed, the Tribunal rightly held from the Ex.A.5 medical expenses are proved as the treatment in Osmania General Hospital and NIMS Hospital supported by prescriptions and case record, treatment and operated as inpatient and P.W.2 deposed to second operation of requiring, incurred nearly Rs.10,000/-.

07. Having regard to the above, what the Tribunal awarded Rs.80,000/- requires to enhance to Rs.1,00,000/- including transport charges, attendant charges, loss of earnings and another operation required. So far as the rate of interest at 6% concerned, as per the expression of the Apex Court in **Rajesh v. Rajbir Sigh** in terms of the expression in **TN Transport Corporation v. Raja Priya** the claimant is entitled for the rate of interest at 7.5% per annum, however on the enhanced amount.

08. Accordingly and in the result, the MACMA MP No.2837 of 2011 is allowed and the appeal is partly allowed enhancing the compensation from Rs.80,000/- to Rs.1,00,000/- with interest at 7.5% per annum subject to condition of not entitled to the interest on the enhanced amount from the date of claim petition but from today till realization. No costs.

09. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

04.02.2016

BV