

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.164 OF 2010

JUDGMENT:

The injured claimant who maintained the claim in O.P.No.408 of 2000 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. District and Sessions Judge, (*for short, 'Tribunal'*), for compensation of Rs. 2,00,000/- against the respondents 1 and 2, owner and Insurer respectively of the lorry bearing No.TN C 1265 for the injuries sustained in the accident dated 28.12.1999, from the contest by the 2nd respondent-Insurer for the 1st respondent-owner remained *exparte*, the tribunal by its award dated 07.07.2005 granted of Rs.38,000/- with interest at 9% per annum fixing joint liability against both the respondents, preferred the appeal impugning said quantum as utterly low, with the contentions in the grounds of appeal vis-à-vis the oral submissions during the course of hearing that the tribunal gravely erred in not considering huge amount incurred for nearly Rs.2,00,000/- by the claimant who sustained severe injuries with mal-union and disability to the right leg and right hand which effects the avocation from the functional disability and what the tribunal awarded of Rs.38,000/- out of it of Rs.20,000/- for fracture of right femur besides Rs.3,000/- towards simple laceration and Rs.5,000/- towards loss of earning and medical expenses since utterly low, to allow the appeal by granting as prayed for.

2. Whereas, the 2nd respondent-Insurer, from the 1st respondent did not choose to contest, submits that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere.

3. Heard and perused the material on record.

4. According to the claim of the petitioner, she was traveling with other members in the jeep bearing No.A.P.Q.4703 to go to Thandoor and the lorry of the 1st respondent No. TNC 1265 insured with the 2nd respondent while coming in opposite direction on 28.12.1999 dashed the jeep in which she and other persons were traveling sustained multiple injuries and one Nagaya died on the spot and she under took treatment in Government Hospital, Mahabubnagar and also at Osmania General Hospital at Hyderabad for more than four months having spent huge amount and still suffering with permanent disability. Ex.A.2 is the wound certificate and Ex.A.3 is the disability certificate. Ex.A.2 speaks crush injury to the lower right femur and forearm with fractures and lacerations over forehead opined as simple. Though PW.2, who is one of the members of the medical board deposed that there is no basis for his saying any disability up to 80% permanent and partial to the limb. The disability to be taken is not limb wise but for whole body that too which functional disability that affects the day-to-day life and source of earnings. From this and from the photo shows the mal-union and limping which effects the day-to-day life and earnings, this Court feels it just to take 30% permanent disability and from her age shown in the claim petition about 22 years by applying multiplier 18 and by the date of accident 1999, estimated the earnings at Rs.2,500/- per month and 30% of it is Rs.750/-, then it is $(Rs.750/- \times 12 \times 18 = Rs.1,62,000/-)$ and even taken for the injuries, pain and suffering, medical expenses and treatment, loss of earnings, attendant charges and transport charges and extra nourishment charges, granted Rs.38,000/-, which is just to award compensation as prayed for.

5. Accordingly and in the result the appeal is allowed-in-part by enhancing the compensation granted by the tribunal of Rs.38,000/- to 2,00,000/- as prayed for however, by reducing interest from 9% per annum to 7.5% per annum from the date of petition till realization. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.10.2016
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