

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.432 OF 2010

JUDGMENT:

The injured claimant, who maintained M.V.O.P. No.1422 of 2007 on the file of Motor Accidents Claims Tribunal-cum-Judge, Family Court-cum-Judge, Family Court-cum-Additional District & Sessions Judge, Guntur (for short 'the Tribunal') against owner and insurer of mini bus bearing No.AP 7U 9297 under Section 163-A of M.V.Act (for short 'the Act') for the injuries sustained by him in the motor accident dated 31.05.2005, from the contest of 2nd respondent—insurer for 1st respondent—owner remained *ex parte*, the Tribunal awarded compensation of Rs.33,200/- with interest at 8% per annum vide award dated 20.04.2009, impugning the quantum of compensation awarded by the Tribunal as utterly low, maintained the present appeal.

2) Even notice served, the respondent No.2—insurer failed to attend hence taken as heard. Heard learned counsel for appellant—claimant. Perused the material on record.

3) It is the contention of the learned counsel for appellant-claimant that Tribunal ought to have awarded compensation as prayed for and failed to consider the medical bills for the grievous injury.

4) Coming to the facts, while the injured claimant in the course of employment as workman under 1st respondent driving the bus in the night from the tractor parked without blinking lights on the road, dashed, as a result, he sustained injuries. He admitted in his cross examination that the accident was his own fault. In fact that is not the criteria, when the injuries sustained are in the course of employment and for that he need not even file claim under Workmen Compensation Act, 1923, from the option available under Section 167 of M.V Act, though the compensation cannot be awarded more than what he is

entitled under W.C Act in maintaining the claim under M.V Act from that provision.

5) Coming to the quantum of compensation, Ex.A2—wound certificate shows out of four injures sustained by the claimant, there is no bone injury to the skull, but for fracture of both bones of right leg tibia and fibula besides fracture of right humerus. As there is a compound fracture of right leg and single fracture to the right humerus, it is just to award Rs.25,000/- for the compound fracture and Rs.20,000/- towards fracture of right humerus besides Rs.20,000/- towards medical expenses, loss of earnings, attendant and transport charges including from medical bills and treatment, though he was treated in the Government Hospital initially, later shifted to private hospital even not examined the doctor, who treated in the private hospital and what he incurred other than under Ex.A2 of Rs.7,200/-. Thus, what the Tribunal awarded of Rs.33,200/- requires enhancement to 65,000/-. It is made clear from the expression of the Three Judge Bench expression of the Apex Court in ***Khenyei vs New India Assurance Company Limited***¹ that the claimants not impleaded the other joint tortfeasors i.e., owner and insurer of the tractor parked in the night on the road without blinking lights for equally be made liable to contribute, the claim can be decided against the impleaded tortfeasors. Thus, after payment/ deposit of the compensation, the insurer is entitled to recover from the joint tortfeasors viz., owner and insurer of the tractor by filing execution petition for contribution of their equal liability.

7) Accordingly and in the result, the appeal is partly allowed while enhancing the compensation from Rs.33,200/- to Rs.65,000/-

¹ 2015 (9) SCC 273

against the respondents viz., owner and insurer of the bus by giving liberty to the insurer of the bus on payment or deposit to recover 50% contribution of the tractor driver, owner and insurer by filing execution petition in the same proceedings vide Khenyei (supra). In other respects the award of the Tribunal holds good. No order as to costs.

8) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.24.11.2016
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