

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.2893 OF 2005

JUDGMENT:

The injured claimant filed O.P. No.959 of 2002 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, East Godavari District at Rajahmundry, (for short 'the Tribunal') under Section 166 of Motor Vehicle Act, 1988 (for short 'M.V Act') for compensation of Rs.1,00,000/- against respondents viz., driver, owner and insurer of mini van bearing No.AP 28 T 9636 for the injuries sustained by him in the motor accident dated 14.07.2002 due to alleged rash and negligent driving of mini van by respondent No.1 belongs to 2nd respondent insured with 3rd respondent, which is coming in opposite direction while he was proceeding on his scooter bearing No.AP 5D 7077, as a result of which, he sustained fracture of right shoulder and other injuries and the Tribunal granted compensation of Rs.18,697/- with interest at 8% per annum from date of filing of O.P till date of award and the rate of interest at 5% per annum from date of award till date of realization vide award dated 03.08.2005, by disbelieving the fracture and by taking note of only seven simple injuries. Impugning the same, the injured claimant maintained the present appeal on the quantum of compensation as utterly low.

2) Heard learned counsel for appellant—claimant and the learned counsel standing counsel for the insurer—3rd respondent. The Respondents 1 and 2—driver and owner of the vehicle remained ex parte before the Tribunal and even impleaded in this appeal and the appeal against them is dismissed for default that is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao***^[1] and the same is recorded. Perused the material on record.

3) It is the contention of the learned counsel for appellant that the Tribunal gravely erred in not considering Exs.A1 to A9 and evidence of PW.1 besides PW.2—Dr.C.S.Rama Krishna and thereby, the Tribunal

ought to have awarded compensation as prayed for and prayed to allow the appeal by enhancing the compensation as claimed of Rs.1,00,000/-.

4) Whereas it is the contention of the learned standing counsel for the insurer is that the compensation of Rs.18,697/- awarded by the Tribunal is even excessive for the seven simple injuries and for treatment undergone only in Government hospital and the private Doctor's evidence is quite unbelievable including of alleged fracture of right shoulder from the Government hospital record shows no any bony injury and thereby, sought for dismissal of the appeal.

5) A perusal of Ex.A5—medical certificate would show that comminuted fracture of upper end of right humerus. The Government Hospital record covered by Ex.A3—would certificate coupled with Ex.A9—attested copy of accident register clearly reveal that there is no any bony injury from the examination. Thereby the Tribunal rightly not believed any bony injury sustained by the claimant by not given credence to Ex.A5—medical certificate and of PW.2's evidence. No doubt, the other evidence on record speaks of seven injuries, though all referred as simple one or two are at vital part of body.

6) Having regard to the above, what the Tribunal awarded Rs.18,697/- requires enhancement to Rs.24,000/- for the seven injuries referred supra including for the medical expenses, treatment, loss of earnings, extra nourishment, attendant and transport charges and so far as the rate of interest is concerned uniformly at 7.5% per annum to be awarded from the date of claim petition till realization.

7) Accordingly and in the result the appeal is partly allowed by enhancing the compensation from Rs.18,697/- (Rupees eighteen thousand six hundred ninety seven only) to Rs.24,000/- (Rupees twenty four thousand only) and the interest uniformly at 7.5% per annum from the date of petition till date of realisation. Rest of the terms of the award holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.23.03.2016
knl

[\[1\]](#) 2001 (1) ALT 495 DB