

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.242 of 2010

JUDGMENT:

The injured claimant of O.P.No.1646 of 2004, impugning the award of the tribunal dated 13.08.2008 in the claim under Section 163-A of the Motor Vehicles Act (for short 'the Act') for Rs.10,00,000/- of the accident dated 22.09.2004 against the owner and insurer of the lorry bearing No.AP 11V 7860 since awarded Rs.98,000/- with interest at 7.5% p.a. maintained the appeal with the contentions that the tribunal gravely erred in awarding such a meager compensation and the same is utterly low and the tribunal ought to have awarded as prayed for and ought to have taken 70% permanent disability as reflected in Ex.A8-Disability certificate in spite of 30% assessed by it and went wrong in considering the age of 58 years and multiplier '8' and even claim petition shows 40 years, hence to award compensation as prayed for.

2. Whereas, it is the submission of the learned counsel for the 2nd respondent-insurer that award of the tribunal holds good and for this Court while sitting on various grounds even by elaborately, there is nothing to interfere, hence to dismiss the appeal.

3. Heard and perused the material on record.

4. The fact that the accident was the result of rash and negligent driving of the driver of the lorry of the 1st respondent from the evidence on record of PWs.1 to 3 with reference to Ex.A1-F.I.R. and Ex.A2-charge sheet is clear and there is nothing to interfere with such finding of the tribunal thereon.

5. Coming to the quantum of compensation, the injured in the claim petition shown his age as 40 years, the hospital case record shows 48 years and the disability certificate shows 41 years and no birth certificate filed and the same are outcome of treatment. Hence, the age of the injured can be taken in between, by taking multiplier as '13.5' under Schedule-II of the Act.

6. Coming to the earnings of the injured, there is no positive evidence to assess the disability by applying multiplier method. Even taken as per the expression of the Apex Court in *Kishan Gopal v. Lala*¹, minimum Rs.30,000/- to be taken even under Schedule-II of reading Rs.15,000/- as Rs.30,000/-. Once such is the case, it is now to consider what is the disability that petitioner suffers. As per Workmen's Compensation Act, 1923 as laid down in Schedule-II, for the claim under Section 163-A of the Act from Workmen's Compensation Act, Schedule-I, item No.22 says amputation of one foot resulting in end bearing upto 50%and item 24 says loss of all toes of one foot

¹ 2014(1)SCC-244)

through metatarso and phalangeal joint 20% A perusal of the disability mentions 70%as excessive and without any basis and even from the photo affixed, it shows no doubt beyond all the toes through the metatarso but there is no upto end bearing of the foot till ankle thereby what the tribunal taken 30%no way requires interference. There from coming to 30%disability out of Rs.30,000/- p.a. the earning capacity, it comes to Rs.9,000/- x 13.5 = 1,21,500/-, Rs.15,000/- towards fracture of shaft of left femur, Rs.15,000/- to the crush injury ultimately resulted in amputation supra, Rs.10,000/- towards medical expenses treatment, Rs.5,000/- towards loss of earnings and Rs.5,000/- towards transport charges and attendant charges, in total, it comes to Rs.1,71,500/- rounded to Rs.1,72,000/- is the just compensation.

7. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.98,000/- to Rs.1,72,000/- with interest at 7.5% p.a. from the date of petition till realization. In other respects the award of the tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:20.10.2016
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