

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.322 of 2016

JUDGMENT:

The injured claimant filed O.P. No.1899 of 2007 on the file of V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad under Section 166 of Motor Vehicle Act for Rs.9 lakhs for the injuries sustained in the motor accident dated 30.04.2007 saying while he was traveling in the passenger bus bearing No.KA 23 D 7272 of 1st respondent insured with 2nd respondent from Kollapur, Maharashtra State to go to Hyderabad, the driver of the bus drove the bus in a rash and negligent manner and lost control and dashed against the tree in between Gandhi Nagar and Talmadgi at about 2.00 am and the petitioner was thrown out of the window and fell down in a ditch resulting fracture of L2 Vertebral bone with Para paresis, deep cut over left side abdomen and right elbow about 2 inch each and other multiple injuries and was shifted to Government Hospital, Manekhelli for medical treatment and therefrom he was shifted to Kamineni Hospital, Hyderabad for posterior stabilization of L2 Vertebra with pedicular screws and instrumentation and saying he was C & F agent, Sahakari Doodh Utpadak Sang, Tathya Saheb, Kore Nagar, Kollapur District and getting income Rs.25,000/- per month.

2) Respondent No.1—owner of the vehicle remained ex parte before the Tribunal even impleaded in the appeal dismissed for default is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu***

Rao^[1]. Heard learned counsel for appellant—claimant and learned standing counsel for Insurance Company. Perused the material on record.

3) The Tribunal having held the accident was result of rash and negligent driving and for no proof of earnings from the evidence of injured claimant and by not given much credence to the so-called income tax returns of 2006 to 2009 from the disability certificate and discharge summary including the evidence of PW.2—Dr C.Kamaraj of Kamineni Hospital of 30% disability proved by estimating the earnings of Rs.5,000/- per month by saying the so-called income tax returns are subsequent and not related to the period of accident and he did not produce any proof regarding his occupation and income and they are not from the source required to be proved by estimating his age about 49 years from his say taken the earnings at Rs.5,000/- per month arrived the compensation on that count of Rs.1,44,000/- adopting multiplier '7.68' and Rs.1,60,000/- towards medical expenses, extra nourishment, total Rs.3,04,000/- and for no further amount for loss of earnings, transport, attendant charges, however by granting interest at 7.5% per annum vide award dated 21.10.2010.

4) Same is now impugned in filing the appeal with delay of 66 days because he is handicapped and from the prolonged and continuous ill health for no proper assistance the delay in consulting the advocate and cause filing the appeal. The delay of 66 days in filing the appeal is condoned

subject to condition of not entitled to interest on any enhanced amount till date of filing the appeal with delay application in June, 2011 and after award of the Tribunal dated 21.10.2010 for the period of eight months.

5) Coming to the appeal, PW.3 evidence regarding the avocation of the injured claimant that of him since disputed by the insurer and no other proof filed by the claimant, the Tribunal rightly assessed the earnings of Rs.5,000/- per month so far as the earnings of the deceased concerned, there is nothing to interfere.

6) However, the Tribunal taken multiplier 7.68 though the claim is filed under Section 166 M.V Act and the age of injured is between 46 to 50, the multiplier applicable is 13, when such is the case 30% disability, the loss of dependency comes to Rs.2,34,000/- (Rs.1,500/- X 12 X 13), Rs.1,60,000/- towards medical expenses as proved and awarded by the Tribunal, loss of earnings, attendant charges, transport charges, extra nourishment even awarded Rs.26,000/- it comes to Rs.4,20,000/- is the just compensation.

7) Accordingly and in the result the appeal is partly allowed by enhancing the compensation from Rs.3,04,000/- to Rs.4,20,000/- . However, the interest on enhanced compensation of Rs.1,16,000/- shall be calculated from 04.06.2011 till realization. In other respects the award of the Tribunal holds good.

8) Consequently, miscellaneous petitions, if any

pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.09.02.2016

knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.322 of 2016

Date:09.02.2016

KnI

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