**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**M.A.C.M.A.M.P.No.5217 of 2010 IN/AND**

**M.A.C.M.A.No.292 of 2016**

**ORDER:**

Heard the learned counsel for the claimant/appellant of O.P.No.323 of 2002 on the file of Motor Accidents Claims Tribunal-cum-III Additional District Judge(Fast Track Court), Nizamabad, and taken as heard the learned counsel for the 2nd respondent-insurer and the 1st respondent-owner of motor cycle bearing No.AP 25E 3348, who were served with proof filed but failed to attend. Perused the material on record.

2. The reason stated in the affidavit filed in support of the petition is poverty. It is not the length of the period of delay but for sufficient cause that is criteria in the pragmatic approach to admit. Hence, the delay of 1218 days in filing the appeal is condoned, subject to condition of not entitled to interest on any enhanced amount but from today. At request, the appeal is taken up for hearing.

3. It is the contention of the learned counsel for the appellant that out of claim of Rs.3,00,000/- since awarded Rs.28,659/- in saying PW2-doctor deposed in support of the evidence of PW.1 with reference to Exs.A3 to A6 and A8 to A10 of fracture of left humorous sustained by the injured claimant and she was operated on 12.02.2002 and undergone follow up treatment and there was second operation in December, 2002 of removal of implants. Ex.A1 shows the bills for Rs.2159/- only. Taking into consideration of the same from the nature of injuries sustained, period of treatment undergone including as in-patient and from the two operations for insertion and after healing of removal implants, extra nourishment, medical expenses treatment, loss of earnings, transport and attendant charges, it is just to enhance the compensation to Rs.40,000/- by upholding rate of interest at 7.5% p.a. needless to say, as observed, not entitled to interest on the enhanced amount but from today.

4. Coming to the exoneration of the insurer, the claim is against two wheeler of 1st respondent insured with 2nd respondent and from the material on record, there is nothing to show the policy is comprehensive policy. The cover note filed by the claimants is already exhibited as Ex.A9 shows act policy that was also conclusion arrived by the tribunal and once it is an act policy and not comprehensive from composite policy or standard package policy, there is nothing to fasten liability on the insurer from the policy not covered the risk as same analogy applies in **United India Insurance Company Limited v. Tilak Singh** as the subsequent I.R.D.A. regulation w.e.f. 16.09.2009 fastens liability to undertake by the insurer where the policy is standard package policy and not for act policy, thereby there is nothing to interfere on the finding of the exoneration of the insurer arrived by the tribunal.

5. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.28,659/- to Rs.40,000/-. However, the enhanced amount carries interest at 7.5% p.a. from today till realization. In other respects, the award of the tribunal holds good. There is no order as to costs.

6. Miscellaneous petitions, pending if any, shall stand closed.

**Dr. B. SIVA SANKARA RAO, J**

**Date:04-02-2016**

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