

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 331 OF 2011

IN / AND

M.A.C.M.A. No.689 OF 2016

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JUDGMENT:

Heard.

2) As the reasons assigned are due to financial difficulty, the delay of 56 days in filing the appeal is condoned subject to condition of not entitled to any interest on any enhanced amount but from today.

3) The appeal is taken up for hearing.

4) The respondent No.1—owner of the appeal remained exparte before the Tribunal and even impleaded in this appeal dismissed for default, is no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Y.Babu Rao** ^[1] and the same is recorded. The 2nd Respondent—insurer even served failed to attend hence taken as heard.

5) The contentions in the grounds of appeal are that the Tribunal gravely erred in awarding Rs.3,51,000/- and also deducting Rs.51,000/- towards contributory negligence of the injured while crossing the road and thereby, sought for setting aside the award of the Tribunal in fixing contribution and fixed liability against respondent No.1 and allow the claim as prayer for.

6) Heard learned counsel for appellant and perused the material on record.

7) As per the claim petition filed under Section 166 of M.V Act for Rs.4,00,000/- against which the Tribunal awarded Rs.3,00,000/- with interest at 7.5% per annum vide award dated 26.07.2010 in O.P. No.90 of 2007 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge, Mahabubnagar. It is averred that while the injured along with her husband and son were proceeding on left side of the road to consume tea at the hotel situated at Ravulapally, when they reached near P.W.D Road, a lorry bearing No.AP 12 U 4638 came in a rash and negligent manner and dashed against claimant as a result, the right leg of claimant was crushed and shifted to Osmania General Hospital for treatment and resulted amputation. On the report of husband of de facto complainant, the police, Kodangal registered Crime No.110 of 2016. The police after investigation filed Ex.A4—charge sheet. If the injured claimant has taken due care while crossing the road the accident would be averted as held by the Apex Court in National Insurance Company Limited vs Rattan^[2]. Where the claim petitioner relied on the FIR and final report which show the negligence of the claimant, the injured can place reliance on it without further proof when the police filed final report after investigation. Exs.A3—accident details and A4—charge sheet, clearly speak as rightly concluded by the Tribunal that injured also contributed to the accident in fixing contribution. The Tribunal did not fix any specified percentage of compensation.

8) Here from the factual ground, 20% on the part of the injured and 80% on the part of the driver of the respondent

No.1—crime vehicle insured with 2nd respondent.

9) Now coming to the compensation for 80% liability of the insurer and owner of the vehicle for the acts of the driver vicariously and to indemnify concerned, the injured claimant was earning Rs.120/- per day. As per ***Latha Wadhwa vs State of Bihar***^[3] in the absence of proof of earnings, minimum Rs.3,000/- per month to be taken, as the accident dated 28.10.2006, therefrom even taken Rs.3,400/- per month with proportionate increase where the injured claimant claimed Rs.120/- per day, as the age of the injured is about 35 years, the multiplier applicable is '16' as per ***Sarla Verma vs Delhi Transport Corporation***^[4], it comes to Rs.6,52,800/- (Rs.3,400/- X 12 X 16). The permanent disability certificate issued by medical board for the amputation of right leg above knee with little more is 80%. Thus, 80% therein comes to Rs.5,22,240/- and after deducing 20% contribution of the injured therein, comes to Rs.4,17,719/-. Apart from it, Rs.50,000/- towards artificial limb, Rs.20,000/- towards medical expenses, transport charges, extra nourishment, loss of earnings, totally comes to Rs.4,87,792/-, is rounded to Rs.4,88,000/- is the just compensation for which the claimant is entitled to. In other respects, the award of the Tribunal holds good.

10) Accordingly and in the result, the appeal is allowed by enhancing the compensation from Rs.3,00,000/- (Rupees three lakhs only) to Rs.4,88,000/- (Rupees four lakhs eighty eight thousand only) subject to deposit of deficit court fee for

Rs.1,88,000/- under Rule 475 of A.P M.V Rules before the Tribunal failing which not entitled to execute. However, the enhanced amount shall carry interest at 7.5% per annum from today till realization. No order as to costs.

11) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

21.01.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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

[\[2\]](#) 2009 (2) SCC 75

[\[3\]](#) AIR 2001 SC 3218

[\[4\]](#) 2009 ACJ 1298