

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.885 OF 2016

JUDGMENT:

The injured claimant filed O.P. No.1890 of 2007 on the file of V Additional Metropolitan Sessions Judge, Mahila Court, at Hyderabad, (for short 'the Tribunal') under Section 163-A of Motor Vehicle Act, 1988 (for short 'M.V Act') for compensation of Rs.2,50,000/- against respondents viz., owner and insurer of lorry bearing No.AP 24 W 6127 for the injuries sustained in the motor accident dated 21.10.2007 since the Tribunal by award dated 12.06.2009 held that the accident was the result of rash and negligent driving of the driver of crime lorry of 1st respondent in answering issue No.1 and granted quantum only Rs.73,750/- with interest at 7.5% per annum including by considering the evidence of PWs.2 and 3, doctors who treated him and issued disability certificate by PW.3 stated the petitioner sustained post traumatic mal-united fracture of right leg lower 1/3 with ankle stiffness to the extent of 25% permanent partial disability. Impugning the same, the injured claimant maintained the present appeal, as the quantum of compensation is utterly low.

2) The M.A.C.M.A. M.P. No.186 of 2011 is filed to condone the delay of 427 days in filing the appeal. Heard and the delay for reasons stated is condoned, subject to condition that the claimant is not entitled to interest on the enhanced compensation but from today.

3) Heard learned counsel for appellant—claimant. The Respondent No.1—owner of the vehicle remained ex parte before the Tribunal and even impleaded in this appeal dismissed for default, is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao*** ^[1] and the same is recorded. The 2nd respondent—insurer even served failed to attend, hence taken as heard. Perused the material on record.

4) The evidence on record shows the injured petitioner sustained multiple injuries including laceration over occipital region, swelling and deformity over the lower 1/3rd of left leg, laceration over medial aspect of left leg and Exs.A10 & A11—X-rays show fracture both bones of lower 1/3rd of the left leg. As per Ex.A9—disability certificate issued by PW.3, shows as if fracture of right leg lower 1/3rd with ankle stiffness and assessed 25% partial disability. Besides Ex.A9 speaking disability from right leg mal-united fracture untrue for what the other evidence consistently show is lower 1/3rd of fracture of left leg and thus there is no basis to PW.3 evidence and disability certificate. Any stiffness of left lower limb can be curable by physiotherapy.

5) Coming to the quantum of compensation, from the multiple injuries supra, the period of treatment undergone, pain and sufferance, loss of earnings, transport charges, attendant charges, extra nourishment for what the Tribunal awarded of Rs.73,750/- requires enhancement to only Rs.90,000/- as Ex.A6—discharge bill shows the petitioner incurred Rs.44,760/ towards medical bills.

6) Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.73,750/- (Rupees Seventy three thousand seven hundred fifty only) to Rs.90,000/- (Rupees ninety thousand only) with interest at 7.5% per annum from the date of claim petition till realization. However, the injured claimant is not entitled to interest on the enhanced amount but from today. The respondent Nos.1 and 2 are directed to deposit the compensation with interest within one month from today with notice, failing which the claimant can execute and recover. On deposit or execution and recover, the claimant is permitted to withdraw the same. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.11.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. (SR) No.48794 OF 2010

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