

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.838 OF 2016

JUDGMENT:

The injured claimant filed M.V.O.P. No.239 of 2009 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short 'the Tribunal') under Section 166 of Motor Vehicle Act, 1988 (for short 'M.V Act') for compensation of Rs.2,00,000/- against respondents viz., driver, owner and insurer of TVS Star Motor Cycle bearing No.AP 15 AA 4282 and the Tribunal passed an award on 25.10.2010, granting Rs.65,750/- with interest at 7.5% per annum fixing joint liability against respondent Nos.1 to 3. Impugning the same, the injured claimant maintained the present appeal against respondents as the quantum is utterly low with the contentions in the grounds of appeal that the Tribunal ought to have been awarded as claimed of Rs.2,00,000/- from the complications developed from the head injury and operated through Neuro Surgeon, Dr.A.Krishna Reddy—PW.2. From the evidence of PWs.2 and 3, shows that the injured was operated on 18.05.2008 in KIMS Hospital and there are complications developed including suffering with fits and frequent head ache, which is permanent nature and the Tribunal ought to have been awarded remaining balance of medical expenses i.e., Rs.35,000/- from the employer what was reimbursed, out of the amount incurred, is only Rs.90,000/- as shown in the petition and awarded Rs.15,750/- without considering the evidence and the Tribunal ought to have been awarded a further sum for extra nourishment, attendant charges and transport charges, hence to allow the claim as prayed for.

2) The M.A.C.M.A. M.P. No.3536 of 2011 is filed to condone the delay of 172 days in filing the appeal, is condoned, subject to condition that the claimant is not entitled to interest on the enhanced compensation but from today.

3) The Respondent No.1—rider of the bike 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 even served failed to attend, hence taken as heard.

4) Whereas it is the contention of the learned counsel for insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and for this Court while sitting in appeal there is nothing to interfere and as the Tribunal considered the evidence on record and awarded Rs.40,000/- for the head injury and Rs.15,750/- only that is being entitled to medial expenses as reimbursed for the claim of loss of earnings, there is nothing to show even he suffered any earned leave being in advance for the period of treatment as availed medical leave in order to half pay concession and thereby sought for dismissal. Heard and perused the material on record.

5) So far as the compensation awarded of Rs.40,000/- for the pain and sufferance from the nature of injury concerned, the evidence of PWs.1 and 3 coupled with Ex.A2—Certified copy of medical certificate, Ex.A7—Out-Patient Card issued by KIMS, Secunderabad and Ex.A11—CT Scan (5) in number, show that the injured sustained head injury with left frontal craniotomy and evacuation of contusion in brain, for which he underwent operation and the operation was conducted by PWs.2 and 3 on 18.05.2008 at KIMS Hospital, Secunderabd and therefrom there is evidence of doctors also complaining that he suffering from headache and fits continuously though there is nothing to say, it is of permanent nature but for the time being. Thus, what the Tribunal awarded Rs.40,000/- for the said injury is no way requires interference.

6) Coming to the medical expenses, he claimed besides what was reimbursed by Rs.90,000/- and he further incurred Rs.35,000/- whereas the Tribunal awarded Rs.15,750/- without assigning any reason, thereby it requires consideration to award Rs.35,000/- and Rs.10,000/- towards transport charges, extra nourishment, Rs.5,000/- towards attendant charges, in all, it comes to Rs.90,000/- is the just compensation to award.

7) Accordingly, the appeal is partly allowed by enhancing the

compensation from Rs.65,750/- (Rupees sixty five 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 claimant is not entitled to interest on the enhanced amount but from today. The respondent Nos.1 to 3 are directed to deposit the compensation within one month from today. On deposit or execution and recover, the claimant is permitted to withdraw the same. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.10.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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