

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.4219 of 2010 IN/AND

M.A.C.M.A.No.304 of 2016

ORDER:

MACMA MP No.4219 of 2010 is filed to condone the delay of 46 days in filing the appeal against the order and decree dated 20.04.2010 in O.P.No.895 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad.

2. Heard the learned counsel for the appellant/claimant. Though the 2nd respondent-insurer served failed to attend. The 1st respondent-owner of lorry bearing No.MH 29 8896 remained exparte before the tribunal and even impleaded in the appeal and dismissed for default, no way fatal to the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1], the same is recorded. Perused the material on record.

3. For the reasons stated in the affidavit filed in support of the petition, the delay of 46 days in filing the appeal is condoned. At request, the appeal is taken up for hearing.

4. The tribunal awarded out of the claim under Section

166 of the Motor Vehicles Act of Rs.8,00,000/-, for the injuries sustained by the injured claimant on 13.12.2007 due to the rash and negligent driving of the crime lorry of the 1st respondent insured with the 2nd respondent, while he and others were proceeding in Maruthi van bearing No.AP 9M 164 from Gannaram to Hyderabad at Chandrayanpally Village Shivar, while proceeding in opposite direction.

5. The tribunal gave a finding from the evidence of the injured claimant-PW.1 and PW.2-Dr.V.K.V.Prasad and no other eye witness was examined, from the crime No.239 of 2007 registered against the driver of 1st respondent by Dichpally Police Station as outcome of rash and negligent driving of the driver of the 1st respondent only for no oath against oath from the respondent to bely the evidence of PW.1, who even denied the suggestion of there is contribution to the accident by driver of the Maruthi van.

6. Coming to the quantum of compensation, PW2-doctor deposed that the claimant sustained fracture of left heel crush besides fracture of both bones of right leg from the crush injury to right foot, a small facial injury besides another sutured wound distal to ankle joint on posterior. Wound Certificate shows that the petitioner sustained avulsion injury to left heel with flap covered

done and there is partial permanent disability of 40% and it is difficult for him to attend labour works and further stated to undergo implant removal surgery. The tribunal in fact, considering the same awarded in all Rs.3,02,216/-.

7. This Court required the physical appearance of the injured-appellant and he is present and examined the injuries and from the pain and sufferance still undergoing, this Court feels it just to enhance the compensation from Rs.3,02,216/- to Rs.3,50,000/-.

8. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.3,02,216/- to Rs.3,50,000/-. In other respects, the award of the tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:01-02-2016

pab

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