

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 10 OF 2011

IN / AND

M.A.C.M.A. No.383 OF 2016

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JUDGMENT:

The appellant—injured claimant filed this appeal having been aggrieved by the Order/Award passed on 08.02.2010 in M.V.O.P. No.298 of 2008 on the file of Motor Accidents Claims Tribunal – cum - V Additional District Judge, East Godavari District, at Rajahmundry (for short ‘the Tribunal’) awarding compensation of Rs.1,26,000/- with interest at 7.5% per annum against the claim of Rs.3,00,000/- filed under Section 166 of Motor Vehicles Act against the driver-cum-owner of the lorry bearing No.AP 16TV 3032 and the policy covered under Ex.B1.

2) Learned counsel for the appellant contended that the quantum awarded by the Tribunal is utterly low, that the Tribunal ought to have been awarded compensation as prayed for by considering the restriction of right shoulder movement showing dislocation, deformity crinitus with abnormal movements of right wrist showing grossly comminuted fracture at distal end of radius and grievous injury i.e., swelling on the left foot showing the fracture of 5th meta tarsal bone and other injuries, hence to enhance the compensation by allowing the appeal as prayed for before the Tribunal.

3) The respondent No.1—driver-cum-owner of the vehicle remained exparte before the Tribunal and even impleaded in the appeal dismissed for default is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao***^[1].

4) Whereas it is the contention of the learned standing counsel for 2nd respondent—insurer that there is no basis to say there is any permanent or partial disability and what the Tribunal awarded of

Rs.1,26,000/- is excessive and exorbitant to reduce but for no cross objections, hence to dismiss the appeal.

5) So far as the delay condonation application is concerned, the reason assigned is due to poverty and lack of means to file the appeal within time and the contention of the insurer is not a ground to condone the delay. The delay is condoned subject to condition that the petitioner is not entitled to interest on any enhanced amount from the date of appeal but from today.

6) At request of learned counsel for both sides, the appeal is taken up for hearing.

7) Heard and perused the material on record.

8) A perusal of the award shows out of Rs.1,26,000/- arrived by the Tribunal shown more than Rs.60,000/- is towards medical bills under Ex.A11 proved as per the Tribunal. Once such is the case, there is dislocation from the fracture of right shoulder with restrictive movements apart from fracture at distal end of radius and swelling on the left foot showing the fracture of 5th meta tarsal bone besides other injuries and towards loss of earnings, extra nourishment, attendant charges, transport charges, it requires enhancement from Rs.1,26,000/- to Rs.1,40,000/-.

9) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.1,26,000/- (Rupees one lakh twenty six thousand only) to Rs.1,40,000/- (Rupees one lakh forty thousand only). However, the petitioner is not entitled to interest on enhanced amount from the date of petition but from today till realization. In other respects the award of the Tribunal holds good. The respondent No.2 is directed to deposit the balance amount as per the above within two (2) months from today and on such deposit, the appellant/ claimant is entitled to withdraw whatever amount lying in the deposit without furnishing any security to meet the necessities.

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

Dr. B. SIVA SANKARA RAO, J

05.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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