

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.4871 of 2011

IN/AND

M.A.C.M.A.No.695 of 2016

ORDER:

Heard and perused the material on record.

2. For the reasons stated in the affidavit filed in support of the petition, the delay of 110 days in filing the appeal is condoned, subject to condition of not entitled to interest on any enhanced amount but from today. At request of both sides, the appeal is taken up for hearing.

3. It is the contention of the learned counsel for the claimant, who is aged 16 years that what the tribunal awarded of Rs.15,000/- p.a. as his earnings from the disability shows that 35% is utterly low to enhance as prayed in the claim petition of Rs.7,00,000/-.

4. Whereas, it is the contention of the learned counsel for the 2nd respondent-insurer that the award of the tribunal holds good but for no cross objections and there is contribution of the injured while riding bicycle and there is nothing to interfere with the award passed by the tribunal. Hence, prayed to dismiss the appeal.

5. A perusal of the material on record shows that the accident was the result of rash and negligent driving of the rider of the bike of the 1st respondent and contention of injured also contributed while riding his bicycle is not tenable, as rightly concluded by the tribunal in answering issue No.1.

6. Coming to the quantum of compensation, the claimant sustained fracture of left femur and as per PW.3 and Ex.A7-disability

certificate, the disability of 35% which is referred not even permanent but partial and permanent. Hence, 20% permanent disability has to be taken into consideration. In the absence of proof of earnings, the minimum to be taken as per Schedule II of the Motor vehicles Act of Rs.15,000/- p.a. to be read as Rs.30,000/- p.a. vide **Kishan Gopal Vs Lala**^[1]. If the same is calculated, it comes to Rs.30,000/- x18(multiplier from the age of the father of the injured)=5,40,000/-. Out of the same, 20% disability comes to Rs.1,08,000/-. In total, the compensation comes to Rs.1,08,000/-+Rs.1,99,000/-(awarded by the tribunal)=Rs.3,07,020/-, which is rounded to Rs.3,07,000/-.

7 Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.1,99,000/- to Rs.3,07,000/-. The enhanced amount carries interest at 7.5% p.a. from today only. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:12-02-2016
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^[1] 2014(1)SCC-244)