

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.689 OF 2010

JUDGMENT:

The injured claimant maintained O.P. No.153 of 2005 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge, (FTC), West Godavari District at Eluru (for short 'the Tribunal') against owner and insurer of the scooter bearing No.AP 5 B 6091 under Sections 163-A and 166 of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.4,00,000/- with averments that on 05.12.2001 while the claimant was going to attend field work on the scooter of 1st respondent company and when he reached High School near fish tank of Ex.MLA, a lorry proceeding in high speed raised dust, as a result the scooter turned turtle and fell down and sustained bleeding injury on his forehead and right eye-brow. On contest, the Tribunal having held that as an amount of Rs.1,55,500/- already received as compensation from the Group Insurance Scheme from self same insurer and also an amount of Rs.31,939.94 paisa received from the owner/ employer which is sufficient, the claimant is not entitled to for any compensation. It is impugning the said award dated 17.03.2009, the claimant filed the present appeal.

2) It is the contention of the learned counsel for appellant/ claimant that despite finding of his entitlement to the compensation and not considering by adopting the multiplier method of 30% disability taken from the loss of right eye vision as per the evidence of PW.2—member of Medical Board with reference to Ex.A5—disability certificate, the claimant is not entitled to compensation as prayed for. Apart from the other contention that the amount received under Group Insurance Scheme and the amount of Rs.31,939.94 paisa received from the

owner/ employer are not liable to be deducted and thereby, the claimant is entitled to compensation as prayed for.

3) Whereas it is the submission of the learned standing counsel for the insurer that the award of the Tribunal holds good, for this Court while sitting in appeal there is nothing to interfere and prayed to dismiss the appeal.

4) Heard both sides and perused the material on record.

5) The latest Three Judge Bench expression of the Apex Court in ***Reliance General Insurance Company Limited vs Shashi Sharma***¹ by referring to the earlier expressions in ***Helen C.Rebello vs Maharashtra SRTC***² categorically holds that any amount for the injuries sustained or any death claim received by the claimant in relation thereto that is liable to be deducted as compensation claims to be concerned as a just compensation and cannot be a bonanza either to the insurer or LR of the deceased as the case may be. Once such is the case, and even from the Group Insurance Scheme, the amount claimed and paid for the injured that is liable to be deducted and rightly deducted so also the amount paid by the employer-cum-owner of the vehicle. Once such is the case, the things to be considered is whether the claimant is entitled to for any further sum beyond what is received by him of Rs.1,87,440/-.

6) The evidence on record shows the factum that the appellant/ claimant is working under 1st respondent and he sustained injuries while proceeding on the vehicle of 1st respondent in the course of employment to sustain the claim. The evidence on record particularly that of Ex.A5—disability certificate issued by PW.2 is very clear that the claimant lost his right eye vision, which is assessed as

¹ Civil Appeal No.9654/2016 dated 23.09.2016

² 1999 (1) SCC 90

30% permanent disability. As per Schedule-II item No.26 of the Workmen Compensation Act, 1923, loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal, can be taken as 30% permanent disability. It is rightly certified to consider. However, there is no evidence that he lost the job or promotional prospectus or earning prospects therefrom in the course of employment to adopt the multiplier method as laid down by the Apex Court in **Raj Kumar vs Ajay Kumar**³. Once such is the case, the lumpsum to be paid as Disability is disability even after post retirement life for his normal functioning and avocations to pursue including to take up any earning.

7) Having regard to the above, in addition to what the amount paid, it is just to award Rs.75,000/- additional to say Rs.1,87,440/- for the loss of eye vision, for the injuries, medical expenses, treatment, loss of earnings, extra nourishment, transport charges, attendant charges etc.

8) Accordingly and in the result, the appeal is partly allowed granting compensation of Rs.75,000/- in addition to the amount already received i.e., Rs.1,55,500/- under Group Insurance Scheme and an amount of Rs.31,939.94 paise from the employer, with interest at 7.5% per annum from the date of petition till realisation. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.05.01.2017
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³ 2011 ACJ 1

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Date:05.01.2017

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