

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. Nos.372 and 1214 OF 2010

COMMON JUDGMENT:

The 3rd respondent—insurer among three respondents including driver and owner of the Tata Sumo bearing No.AP 1U 8420, impugning the two awards passed on 17.11.2008 in O.P. No.349 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short 'the Tribunal'), maintained under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for a compensation of Rs.20,00,000/- by the injured claimant—Bingi Shankar @ Shankaraiah, from the contest of respondents, the Tribunal awarded compensation of Rs.13,45,900/- with interest at 8.5% per annum from the date of petition till realisation fixing joint liability against respondents 2 and 3 and the other award of the even date passed in O.P. No.285 of 2006 by the same Court, maintained by injured claimant—Jakkam Lachaiah for a compensation of Rs.2,00,000/- under Section 166 of M.V Act; from the contest of the respondents, the Tribunal granted compensation as prayed for with interest at 8.5% per annum, maintained the present two appeals.

2) The contentions of the learned standing counsel for insurer are almost common in both the appeals but for on the quantum are that Tribunal ought to have seen that there is composite negligence of the injured persons and in fixing the sum if not to hold the total negligence of the injured persons, while

they were proceeding on Hero Honda Splendor bearing No.AP 1 F 2611 and the quantum arrived at by the Tribunal is baseless and unsustainable more particularly in O.P. No.349 of 2006 and the same is liable to be reduced otherwise if not entitled to anything beyond just compensation and that once there is no loss of earnings, the multiplier method for any permanent disability cannot be adopted as per settled law to reduce therefrom by awarding any fixed sum subject to liability and on apportionment of composite negligence and rate of interest is also excessive, hence to reduce. Learned standing counsel for the insurer in both the appeals reiterated the contentions in the course of hearing.

3) It is the submission of the learned counsel for respective claimants that the awards of the Tribunal hold good for this Court while sitting in appeals there is nothing to interfere hence to dismiss both the appeals.

4) Heard both sides and perused the material on record for common disposal of the appeals.

5) No doubt, the common point involved in the two appeals is regarding any composite negligence of the rider and pillion rider of the bike and to decide any liability to apportion the compensation therefrom from the evidence on record of respective injured claimant viz., PW1, RW.1 and from Exs.A1—FIR, A2—Charge sheet.

6) The manner of accident to determine is that Ex.A1—FIR is registered on the report of one Teekaiah, S/o.Laxmaiah on

03.06.2006 which reads that on that day the injured along with one Jakkam Lachaiah were proceeding on a Hero Honda Splendor Motorcycle bearing No.AP 1 F 2613 and when they reached Vyshya Bhavan, Mancherial at about 12.00 noon, a Tata Sumo bearing No.AP 1U 8420 driven by 1st respondent with high speed and in a rash and negligent manner dashed the opposite coming Hero Honda motor cycle, as a result the rider and pillion rider of the motor cycle fell down and sustained injuries and they were shifted in Ambulance to Government Hospital, Macherial. Rider of Hero Honda one Bingi Shankaraiah, S/o.Ramulu @ Rajalingu of Mandamarri is a coal filler of Chennur-II mine of Singareni Collieries Company Limited and the pillion rider is Jakkam Lachaiah, S/o.Gopal is a retired Singareni Collieries Company Limited Worker of Mangamarri Village, hence to take action.

7) Ex.A1—FIR shows that the accident occurred while both vehicles were proceeding in opposite direction. The charge sheet did not mention any more details necessary to ascertain from the contents as to the manner of accident or any scene observation report prepared but for reiterating the FIR the sumo driver allegedly surrendered and interrogated. Some witnesses were examined while filing charge sheet for the offence under Section 338 IPC. There is no MVI report filed much less scene observation report. Coming to the eye-witness, who set the law in motion, he was not examined.

8) The injured PW.1's evidence also speaks that while proceeding in opposite direction the accident was occurred and he

sustained head injury and left leg crushed. He deposed in the cross examination that he is the owner of the bike and he did not file any licence and the place of accident is thickly populated and denied the suggestion of it is his negligence that caused the accident. He deposed that pillion rider is his father-in-law. He filed Ex.A5—policy=Ex.B1. Ex.A53 is the disability certificate.

9) PW.2—Manager of Chennur-II Mine deposed that the injured claimant is a daily wager and getting Rs.495-73 ps per day as on 31.05.2006. The date of birth of PW.1 is 28.12.1961 and his last working day is 31.05.2006 as coal filler in underground mine and the claimant was terminated from service due to road traffic accident otherwise his retirement is by 31.12.2021; his termination was on 20.12.2006 and he left 15 years of service. Ex.A51 is termination letter dated 20.01.2007. In the cross examination, he deposed that the claimant is a daily wage worker and being paid as per result of work from the performance, thereby two heads are not standard. The claimant filed an application for his own removal from service and it is marked as Ex.B1. He received gratuity of Rs.1,41,283/- and also other benefits which he is entitled till removal from service and he studied 5th class and his treatment is in Singareni Collieries Hospital on free of cost. In fact, from the cross examination of PW.1, the place of accident is busy area and the accident took place while proceeding in opposite direction and as per the FIR, there is only head injury. However, the medical record shows injury to the leg. Thus, but, for the contribution of the injured—

bike rider, the accident could not be possible though contributory negligence depends upon several factors, it is just to fix 20% contribution on the part of the injured and remaining 80% on the driver of the Tata Sumo of 2nd respondent insured with 3rd respondent.

10) Coming to the quantum of compensation, Ex.B1—letter addressed by injured on 26.09.2006 to declare him as unfit, by medical board examination, because of the injuries he is unable to move, Ex.B51—letter of Singareni Collieries and Ex.B53—certificate issued by Medical Board, Karimnagar speak only injury to left leg foot top and the same cannot be taken as disability certificate for medico legal purpose to rely therefrom.

11) Now coming to the evidence of PW.3—Dr.B.Lakshman, who treated him, shows that he is a private Ortho doctor and what he deposed that the injured was admitted in a private hospital on 03.06.2006 for fracture shaft femur, fracture of tibia spine, head injury, compartment syndrome left leg and out of the four, three are grievous injuries. He conducted operation on 04.06.2006 by internal fixation of femur with inter-locking nailing and discharged the injured on 07.06.2006. It is not his case that he opined for any amputation and to say that claimant went to other hospitals and for amputation he did not file any medical record. PW.3 deposed that on 09.06.2006 PW.1 re-admitted and he conducted operation on the same day. He again inspected on 10.07.2006 and as the muscles gradually become necrotic, operated on 14.07.2006 and muscle flap and skin grafting was

done under spinal anesthesia and was discharged on 01.08.2006 and advised to mobilize with help of walker, he lastly visited on 16.06.2007 and deposed that there is ulser not healing and the X-rays shows fracture shaft femur was united with shortening and assessed 50% partial disability therefrom saying unfit for underground hardwork. Ex.A12—hospital bill of Rs.36,450/- Ex.A13—hospital bill of Rs.86,500/-. He deposed that the claimant himself came to the hospital without any reference by doctor and he did not obtain information as to whether he initially undergone treatment and even it is a road traffic accident he did not inform to police and as claimant was informed to report to police and the NIMS doctor did not conclude for amputation and the claimant himself left the hospital on 07.06.2006 against medical advice and he performed three operations in all and the head injury is only a minor injury and for the first six months he attended the hospital for every 15 days for follow up treatment and denied the suggestion of claim is false and his evidence is imaginary and there is no basis.

12) Ex.A4 is the injury certificate of the Government Hospital, Mancherial which shows fracture of shaft femur left side, fracture of spine left tibia, Developed compartment Syndrome left leg and head injury and referred to higher hospital from that even there is no basis to say there is 50% disability and what PW.3 deposed is only 50% permanent partial disability. Thereby, there is no basis to say he is unfit for regular duties totally. What the Tribunal granted is Rs.10,86,800/- towards 100% disability by

deducing 1/3rd is with no basis. Even taken 50% partial disability from the evidence of PW.3, it can at best from his age about 45 years from the earnings of the injured to a maximum of 30% to 40%, he is entitled to, if at all, only Rs.5,00,000/-. Under medical expenses, the injured claimed Rs.2,00,000/- which is evident from his evidence and if that is taken, it comes to Rs.7,00,000/- is the just compensation.

13) Coming to the liability of the insurer, once the injured is a third party, liability is limited and what RW1 deposed is that there is nothing to show that the driver of the Tata Sumo has no valid driving licence, thus the insurer is liable to pay and recover the same and what the Tribunal awarded of Rs.13,45,900/- is to be reduced to Rs.7,00,000/-. In other respects the award of the Tribunal holds good.

14) Coming to M.A.C.M.A. No.1214 of 2010, from the evidence of PW.2—Dr.B.Lakshman and PW.3—Dr.Manas Panigrahi and from the final bills of NIMS what the Tribunal awarded is Rs.2,00,000/- is the just compensation, which no way requires interference to reduce.

15) Coming to the rate of interest awarded by the Tribunal is at 8.5% per annum. From the settled proposition of law in **TN Transport Corporation v. Raja Priya**¹ and **Rajesh vs Rajbir Singh**² that while awarding reasonable rate of interest the steep fall in the bank interest rate since past several years has to be

¹ (2005) 6 SCC 236

² 2003 ACJ 1403

kept in mind and awarded therefrom interest at 7.5% p.a. as reasonable.

16) Accordingly and in the result, the appeals are partly allowed as under:

- a) M.A.C.M.A. No.372 of 2010 is partly allowed reducing the quantum of compensation from Rs.13,45,900/- to Rs.7,00,000/- and reducing the rate of interest from 8.5% per annum to 7.5% per annum from the date of petition till realisation.
- b) M.A.C.M.A. No.1214 of 2010 is partly allowed confirming the compensation awarded by the Tribunal by reducing the rate of interest from 8.5% per annum to 7.5% per annum from the date of petition till realisation.
- c) In other respects, the awards of the Tribunal holds good.
- d) No order as to costs.
- e) Consequently, miscellaneous petitions, if any pending in these appeals shall stand closed.

Dt.06.04.2017
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Dr. B. SIVA SANKARA RAO, J

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:06.04.2017

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