

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.3348 OF 2008

JUDGMENT :

The appellant-injured filed the present appeal aggrieved by the order/award dated 10.10.2005 in M.V.O.P.No.137 of 2005 passed by the Chairman, MACT-cum-Additional District Judge, Warangal (for short, 'the Tribunal') in granting compensation of Rs.55,520/- with interest at 7.5% p.a. against the claim of Rs.2,00,000/- in the claim application filed under Section 166 of the Motor Vehicles Act, 1988.

2) Heard Sri Ch.Shashibhushan learned counsel for the appellant and none appeared on behalf of respondents. Perused the material on record. The parties are being referred as they are arrayed before the Tribunal for the sake of convenience.

3) Learned counsel for the appellant contended that the Tribunal gravely erred in not properly taking earning capacity and the percentage of permanent disability and also not awarded the amounts under pain and sufferance, loss of earnings properly, so also for attendant charges, transport charges and extra nourishment, hence to increase the compensation by allowing the appeal as prayed for before the Tribunal.

4) Now the points that arise for consideration in the appeal are:

1. *Whether the quantum of compensation awarded by the Tribunal is utterly low and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?*
2. *To what result?*

POINT-1:

5) The fact that the accident was the result of the rash and negligent driving of the driver of the crime vehicle of the 1st respondent insured with 2nd respondent not in dispute for the purpose of appeal,

but for the quantum of compensation awarded by the Tribunal.

6) Coming to the quantum of compensation, the petitioner sustained as per evidence of P.W-2 with reference to Ex.A-3 injuries certificate issued by P.W-2 of the private hospital by name Mourya Hospital that she sustained one contusion, one abrasion and another contusion with abrasion described simple besides noted two fractures one is to the fibula and the other is to the tibia of the right leg. In fact as pointed out by the Tribunal, even from the evidence of P.W-2, the operation conducted for both bones of right leg is of intramedullary interlocking nail and not two operations to different fractures of the right leg. No doubt one is referred as comminuted. Ex.A-5 is the disability certificate issued by the doctor, Ex.A-4 is the discharge summary as rightly pointed out by the Tribunal in the Ex.A-5 disability certificate, there is no mention of any shortening of the right limb muchless 2 cm for the oral say of P.W-2-doctor to give credence, for no basis when P.W-2 himself stated that by the time the injured was discharged as mentioned after treatment as inpatient from 16.08.2004 to 28.08.2004, with operation on 18.08.2004, from satisfactorily recovered; the question of considering any disability does not arise and what the Tribunal taken from the contention of restricted movements at 20% and from very claim of earning 30/- per day by taking earnings at Rs.900/- per month with 17 multiplier from age arrived, the disability of a sum of Rs.36,720/- is also not tenable as contended by insurer. However, Rs.5,000/- for pain and sufferance of injuries including for fractures is utterly low and unjust to enhance for entitlement under different heads with no permanent disability. In fact for the three simple injuries, an amount of Rs.6,000/- and for the fractures of both bones of right leg at different places as per the evidence of doctor with one is described comminuted, an amount of Rs.45,000/-, total Rs.51,000/-, for pain and sufferance for said injuries, medical expenses Rs.12,000/- besides that the claimant is entitled to attendant and Transport charges, extra nourishment and loss of earning Rs.14,000/- and the second operation

for removal of implants Rs.10,000/-. In all it comes to Rs.87,000/-.

Accordingly point No.1 is answered.

POINT No.2

7) In the result, the appeal is allowed in part by enhancing the quantum of compensation from Rs.55,520/- to Rs.87,000/- with 7.5% p.a. interest in favour of the claimant and the respondents 1 and 2 are jointly and severally liable to pay the compensation. The 2nd respondent is hereby directed to deposit or pay the compensation amount within one month from today, failing which the claimant can execute and recover to the credit of the O.P before the Tribunal. After deposit or recovery by execution, the claimant is entitled to withdraw the same. There is no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date: 28-03-2014

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