

HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A. No.524 OF 2005

Dated 3-3-2015

Between:

Sabavath Gemya.

...Appellant.

And:

C.Muralidhar Reddy and another.

...Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A. No.524 OF 2005

JUDGMENT:

This appeal is preferred against the order dated 25-10-2004 in O.P.No.244 of 2003 on the file of IV Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Civil Court, Hyderabad.

Appellant-claimant herein filed above referred O.P. claiming compensation of Rs.1.30,000/- for the injuries sustained by him in road accident dated 25-11-2002. He contended that he sustained fracture of right femur and other injury and he was shifted to NIMS Hospital, Panjagutta and was treated as in-patient and in view of the fracture, he was bed ridden and unable to move and could not do labour work and that he was advised to take complete bed rest for six months.

He further contended that he was earning Rs.2,500/- per month as labourer and that he sustained disability and entitled for Rs.1,30,000/-.

Insurance Company contested the claim and disputed the monthly earnings and the claim of Rs.1,30,000/-. It contended that claim is high and excessive and the petitioner has to prove that the

accident was due to rash and negligent driving of driver.

On these contentions, trial court examined two witnesses and marked 11 documents on behalf of claimant and no witness is examined and Ex.B.1 is marked on behalf of respondents.

On an overall consideration of oral and documentary evidence, trial court granted Rs.62,665/- as compensation taking the medical expenses at Rs.13,164-70ps, Rs.30,000/- towards injuries, Rs.4,500/- towards loss of earnings for three months and Rs.10,000/- towards pain and suffering and Rs.5,000/- towards extra nourishing. Now aggrieved by the same, claimant preferred the present appeal.

Heard both sides.

Advocate for appellant-claimant submitted that lower court erred in not considering the disability certificate marked as Ex.A.8 which discloses 30% disability. He further submitted that lower tribunal ought to have calculated compensation by taking disability and income of the deceased by applying multiplier process but the lower tribunal unilaterally fixed compensation.

He further submitted that when the appellant produced medical bills for Rs.43,164-70ps, only Rs.13,164-70ps is granted. He further submitted that the petitioner was working as labourer and earning not less than Rs.2,500/- per month and when he deposed the same, there is no rebuttal evidence disputing the said fact but the lower tribunal without any contra evidence unilaterally reduced the monthly income to Rs.1500/- and the same is not correct.

He submitted that the claim of appellant for Rs.1,30,000/- is quite reasonable and therefore, the remaining balance of Rs.67,335/- is to be granted.

Advocate for Insurance Company submitted that the lower tribunal has rightly fixed the compensation and it has considered all aspects and discarded the evidence of P.W.2 and Ex.A.8 Certificate and that there are no grounds to interfere with the findings of the lower tribunal. He further submitted that there are no grounds to interfere with the quantum fixed by the lower tribunal.

Now the point that would arise for my consideration in this revision is whether the order of tribunal is proper, legal and correct?

POINT:

There is no dispute with regard to accident and the injuries sustained by appellant in the said accident. As seen from the evidence, appellant was initially treated at NIMS Hospital as inpatient from 25-11-2002 to 5-12-2002 and as per the record, he sustained fracture of right femur, right interior pubic rami i.e., multiple chir importitled area (r) urethra, lyverajic laceration over left leg debridement, Sustreya right popliled area and Multiple injuries all over body. Professor of Orthopaedics Hospital, is examined as P.W.2 and is one of the members of the Medical Board for assessing disability. He deposed that he examined the appellant-claimant and issued disability certificate dated 25-2-2004 under Ex.A.8 by assessing the percentage of disability at 30% but in the cross-examination, he deposed that the patient suffered two inches of shortening and therefore, disability is at 20% but the evidence of doctor was discarded by trial court on the ground that he has not treated the patient.

As seen from record, he is a member of the Board constituted for issuing Disability Certificate and therefore, his duty is to examine the patient and case record of the patient and then assess the disability.

As seen from Ex.A.8 certificate, he is not only doctor who issued ExA.8 but he is one of the team of doctors who examined appellant and assessed the disability. As rightly pointed out by advocate for appellant-claimant, the lower tribunal was not right in discarding Disability Certificate and the evidence of P.W.2 on the ground that P.W.2 has not treated the patient. From the evidence of P.W.2, it is clear that appellant sustained 20% disability and therefore, the same has to be taken into consideration.

It is the case of appellant that he was working as labourer and earning Rs.2,500/- per month and he deposed in the same lines in the evidence. No evidence is produced on behalf of respondent to dispute the monthly income of the appellant. Advocate for appellant-claimant submitted that lower tribunal has unilaterally fixed the monthly income and as there is no basis for fixing the income at Rs.1500/- per month, therefore, the income as spoken by P.W.1 has to be accepted. He further submitted that at least a sum of Rs.2,000/- per month may be taken as income of the appellant, contending that in 2003, a labourer was getting a minimum of Rs.100/- per day.

Considering the submissions of the learned counsel for the appellant and the evidence of P.W.1, I feel that his monthly income can be taken as Rs.2,000/- per month and on that basis, compensation can be calculated. Admittedly, the appellant was 40 years as per Ex.A.8 Disability Certificate and the multiplier applicable to the age group of 40 is 15 and for the injuries, compensation has to be calculated by taking monthly income of appellant at Rs.2,000/-. So if a calculation is made it comes to Rs.72,000/- ($\text{Rs.2,000/-} \times 12 \times 15 \times 20/100$), the lower tribunal has granted only Rs.30,000/- as compensation for injuries

for pain and suffering and therefore, the same has to be enhanced by Rs.72,000/-. The remaining amount granted by Tribunal has to be taken as it is since objection with regard to those heads is not tenable. Thus the total compensation comes to Rs.1,04,665/- but the tribunal granted only Rs.62,665/-.

Accordingly, this M.A.C.M.A. is partly allowed enhancing compensation from Rs.62,665/- to Rs.1,04,665/- and the appellant is entitled for this difference of amount of Rs.42,000/- with interest at 7.5% per annum. Each party do bear their own costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 3-3-2015.

Dvs

HONOURABLE SRI JUSTICE S.RAVI
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