

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.1858 of 2004

JUDGMENT:

Aggrieved by the Award dated 29.03.2004 in M.V.O.P.No.1059 of 1999 passed by the Chairman, M.A.C.T-cum-District Judge, Guntur awarding compensation of Rs.69,060/- for injuries against the claim of Rs.1 lakh, the claimant preferred the instant appeal.

2) Heard arguments of Sri T.S.R.Prasad, learned counsel for appellant and Sri Gadi Ramachandra Reddy, learned counsel for 2nd respondent—Insurance Company. Appeal against R1—owner was dismissed for default by order dated 19.11.2015.

3a) The main thrust of argument of learned counsel for appellant is that in spite of the fact that PW2—doctor opined that due to fracture of right hip joint and its mal-union the claimant suffered 25% disability, the Tribunal has accepted the disability only at 15% on the wrong assumption that the claimant did not go for physiotherapy in spite of the advise by PW2 out of his negligence and had he undergone the physiotherapy the situation would not have aggravated. Learned counsel argued that the doctor in clear terms stated that physiotherapy will only improve musculo-skeletal movements of the joint but it will not set right the mal-union. In that view, learned counsel argued, the Tribunal ought to have taken the disability at 25% instead of 15%.

b) Nextly, he argued that Tribunal ought to have taken multiplier '17' in stead of '16' considering the age of the claimant as 30 years. He thus prayed to allow the appeal and enhance the compensation suitably.

4) Per contra, learned counsel for 2nd respondent, Sri Gadi Ramachandra Reddy would argue that compensation awarded under different heads is just and reasonable and the percentage of disability fixed by the Tribunal was also right and since the claimant did not undergo physiotherapy as advised by the doctor, the Tribunal rightly fixed his disability at 15% and therefore, there is no need to review the same in the present appeal. He thus prayed to dismiss the appeal.

5) In the light of above rival arguments, the point for determination is:

“Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?”

6) **POINT:** On a close perusal of evidence particularly the evidence of PW2, I am of the view that Tribunal committed error in accepting the disability of the claimant at 15%. PW2, the doctor who examined the claimant upon taking X-ray and certified the disability has clearly stated that there is stiffness of right hip joint in the extreme degrees of movement and thereby claimant is not able to sit and squat as a normal person would do. He also stated that because of irregularity of the Acetabulum, the claimant may develop early osteo-arthrititis of right hip joint which may lead to disability. He further stated that while walking the claimant may get pain because of irregularity in Acetabulum. Considering the position of the

claimant, PW2 certified his permanent disability at 25%. It appears he opined that functional disability is also same in his right hip joint. In the cross-examination he stated that he advised the claimant to undergo physiotherapy, but there is no evidence that claimant underwent physiotherapy. He stated that though physiotherapy will improve the musculo-skeletal movements of the joint, but will not set right the mal-union.

7) In the light of above evidence, which is not challenged, the opinion arrived by the Tribunal that had the claimant undergone physiotherapy his position would not have aggravated, cannot be appreciated. The doctor in clear terms opined that physiotherapy will improve the musculo-skeletal movements of the joint, but it would not set right mal-union. Hence, there is no strong reason to vary with the percentage of disability certified by PW2 who is a competent doctor. Therefore, 25% can be accepted to calculate compensation.

8) Multiplier is concerned, the Tribunal considering the fact that age of the claimant is mentioned differently in claim petition, Ex.A3—wound certificate and discharge summary, ultimately taken his age as 35 years and accordingly fixed '16' as multiplier. On perusal of the record, I find no irregularity or illegality in above fixation. Thus, the compensation for disability comes to Rs.57,600/- (Rs.1,200 x 12 x 16 x 25%). Thus, the total compensation payable to the claimant under different heads is detailed as below.

Compensation for loss of future earnings on account of disability	Rs. 57,600-00
Medical expenditure for follow up treatment	Rs. 9,400-00
including removal of POP	Rs. 1,500-00
Loss of earnings for three months (Rs.1,200 x 3)	Rs. 3,600-00
Non-pecuniary damages	Rs. 20,000-00

Total	Rs. 92,100-00

Thus, the compensation is enhanced by **Rs.23,040/-** (Rs.92,100/- minus Rs.69,060/-)

- 9) In the result, the appeal is partly allowed and ordered as follows:
- The compensation is enhanced from **Rs.69,060/-** to **Rs.92,100/-** with proportionate costs and interest @ 9% p.a. from the date of OP till the date of filing appeal and @ 7.5.% p.a. from the date of appeal till the date of realisation.
 - The respondents are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.
 - No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.10.2016
Murthy