

SMT JUSTICE T. RAJANI

MACMA.No.438 of 2006

JUDGMENT:

This appeal is preferred by the claimant assailing the order of the District Judge cum Motor Accident Claims Tribunal, Krishna, Machilipatnam in OP.No.268 of 2003 dated 03.10.2005 on the grounds that the tribunal below ought to have taken monthly earnings of the claimant at Rs.4,500/- per month including batta instead of Rs.3,000/- ; the amount granted under the head loss of past earnings is very meager; the tribunal below ought to have granted Rs.3,50,000/- as claimed for implantation of steel rods in both the legs and the tribunal erred in granting Rs.20,000/- towards pain and suffering as against claim of Rs.80,000/- and the amount of Rs.15,000/- granted under the head liability is also meager.

2. Heard both the counsel.

3. The tribunal awarded Rs.75,000/- towards medical expenses incurred by the claimant towards treatment for the injuries sustained by him in the accident. The medical bills were filed only to the extent of Rs.43,621/- though the claim is for Rs.1,22,000/-. When there is no evidence for the claim made by the claimant, the tribunal has to go only by the evidence that is available and the tribunal rightly considered the medical bills, which were filed by the claimant and apart from the amount of Rs.43,621.23 ps., had granted some amount towards future surgeries that the petitioner had to undergo, according to the evidence of both P.Ws.1 and 3.

4. In the background of the medical expenditure incurred for the treatment itself, which includes surgeries for implantation, the expenditure for future surgeries cannot be more than the said amount and hence, this Court considers that the tribunal has adequately awarded amounts for future surgeries also.

5. The other contention that the income taken by the tribunal is also less is not met by any cogent evidence. In the absence of any documentary proof, the approach of the tribunal in taking Rs.3,000/-, as monthly income of the claimant cannot be found fault with.

6. The appellant's counsel requests this Court to enhance the compensation awarded towards loss of income during the period of treatment by considering evidence of P.W.3, who stated that the claimant requires one year for regaining normalcy.

7. This Court finds some soundness in the said argument, as, in spite of there being clear evidence that the claimant will not be able to attend to work for one year, as he requires that much time for recovery from the injuries, the tribunal ignored it. The tribunal took the monthly income of the claimant at Rs.3,000/- and Rs.18,000/- (Rs.6000/- x 3) was awarded. There is absolutely no explanation as to how the aforesaid amount was arrived at. However, considering the evidence of P.W.3 that the period of recovery is one year and the income taken by the tribunal being Rs.3,000/-, loss of salary for one year i.e. $\text{Rs.3,000/-} \times 12 = \text{Rs.36,000/-}$ is awarded in the place of Rs.18,000/- awarded by the tribunal. The claimant seems to have sustained several fracture injuries i.e. one fracture injury on the left

lateral incisor tooth, fracture injuries on both legs, fracture of navicular bone of right foot and fracture of nasal bone. Hence, in the light of the fact that the claimant sustained several injuries, an amount of Rs.20,000/-, which was awarded under the head pain and suffering is enhanced to Rs.30,000/-. The disability, which was stated by P.W.4 as 40%, was rightly not believed by the tribunal by considering the evidence of P.W.4, that the disability is only temporary.

7. Hence, the award of the tribunal is modified to the extent indicated above and the rest of the award is left uninterfered with. This award shall relate back to the date of decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award by the Court below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

June 16, 2017
DSK

T. RAJANI, J

