

SMT JUSTICE T. RAJANI

MACMA.No.1079 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the III Additional District Judge, Karimnagar in OP.No.506 of 1994 dated 11.04.1996 on the grounds that the Court below did not award adequate compensation and it granted a lump sum amount of Rs.40,000/- without appreciating each of the aspects that are to be taken into consideration while awarding just compensation. It also failed to consider the treatment taken by the claimant in the Government Head Quarters Hospital, Karimnagar as in-patient for more than 3½ months and the expenditure incurred by him. The disability of 30%, as stated by P.W.3, was also not considered and the expenditure required for future surgery was also not awarded, though P.W.3 spoke about the same.

2. Heard the counsel for the appellant. Counsel for the respondent remained absent.

3. The claimant is said to have sustained a fracture of the right thigh. In order to prove the said fact, he examined P.W.3, doctor, who treated him. P.W.3 is an Orthopaedic Surgeon and he issued disability certificate to the claimant. X-rays revealed that rods were inserted in the right thigh portion. He spoke about the disability, but he stated that the claimant can continue his profession as driver and if he finds it difficult to continue with the rods, the same can be removed by surgery. He spoke about shortening of right leg up to

2 inches and he stated that the surgery required is to lengthen the right leg by 2 inches and the cost of the surgery is stated to be Rs.20,000/-. He categorically stated that there is no problem for driving but the claimant would be unable to do other works. The evidence of P.W.3 becomes the basis for awarding compensation. There is no dispute that the injuries were sustained in the accident. The injury, being fracture injury, can be compensated with Rs.20,000/- for pain and suffering caused by it. The medical expenditure incurred by the claimant, to an extent of Rs.16,381/-, is evidenced by the medical bills Exs.A7 to A25 and there need not be reason to disbelieve the same. Hence, the said amount is awarded towards medical expenditure incurred by the claimant.

4. The fracture injury being to the leg, the claimant might have required special transportation to and from the hospital, while taking treatment. Hence, Rs.10,000/- can be awarded towards transportation and other incidental expenses. The expenditure for future surgery, stated to be Rs.20,000/-, also needs to be awarded, as the evidence of P.W.3 is not discredited in the cross-examination.

5. The claimant is stated to be a driver and P.W.2 spoke about the income the claimant, as he is the person, who engaged the claimant for driving his van. According to him, he was paying Rs.1,500/- as salary and Rs.50/- per day as batta in addition to the salary. Hence, the total income per month of the claimant would be Rs.3,000/-, which can be very safely accepted, as it is not exorbitant. From the injuries, it can be presumed that two months might have been the period of treatment and recovery. Hence, Rs.3,000/- x

2 = Rs.6,000/- is awarded towards income during the period of treatment, rest and recovery. The evidence of P.W.2 shows that there would not be any difficulty for the claimant to carry on his avocation as driver. But, however, there would be loss of amenities of life, though temporarily, till the surgery for removal of implants is conducted. Hence, Rs.20,000/- is awarded towards loss of amenities of life.

6. In the result, the claimant is entitled to total compensation of Rs.20,000/- + Rs.16,381/- + Rs.10,000/- + Rs.20,000/- + Rs.6,000/- + Rs.20,000/- = Rs.92,381/-, which is rounded off to Rs.93,000/-, in the place of Rs.40,000/- awarded by the Court below and the rest of the award is left uninterfered with. This award shall relate back to the date of decree and the compensation awarded 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.

August 16, 2017
DSK

T. RAJANI, J