

THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA.No. 455 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the petitioner before the lower Court, assailing the Award of the VI Additional District Judge, Mahabubnagar in O.P.No.721 of 2001, dated 10.11.2005, on the ground that the Tribunal did not appreciate the evidence properly while awarding the compensation amount and the medical evidence regarding the disability of the appellant, which came through PW-2, who is the Doctor and who stated that the appellant is unable to lift the objects with his left hand and that his disability thereon is at about 50 to 60%, is ignored.

2. Heard the learned counsel appearing for both the parties.
3. A perusal of the evidence of PW-2 would show that though he stated that there was 50 to 60% disability and that the petitioner cannot do labour work, he testified that there are no fracture injuries and that the appellant was suffering with lacerated injuries and at the time of discharge the patient's condition was stable and pain was relieved. Hence, the evidence of PW-2 seems to be inherently inconsistent and cannot be relied upon to conclude that there was disability to the appellant, much less to the extent of 50 to 60%. No fault can be found with the judgment of the lower Court in that regard, and the appreciation

done by the lower Court is on proper lines. There is no disability certificate filed in this case. Hence, unless there is proper evaluation of the disability of the appellant and there are substantial reasons given for the disability that is stated by PW-2, it cannot be accepted that there is any disability to the appellant.

4. The learned counsel for the appellant seeks the Court to enhance the amount, which was granted towards loss of earnings during the period of treatment. The Court below awarded a sum of Rs.2,250/- for one month, by taking the earnings of the appellant at Rs.70/- per day, which he was earning from doing cooli work. The loss of earnings was taken only for one month period. The learned counsel relied upon a ruling of this Court in *United India Insurance Co.Ltd., Hyd. v. Thonti Kanakaiah*¹ wherein it was held that when the evidence on record does not prove that the claimant has suffered permanent partial disability, at the most it can be said that on account of fracture the claimant would have been disabled from working for a period of two to three months. In this case, there are no fractures, as admitted by PW.2-Doctor, and the injuries sustained are only lacerated injuries. Ex.A-2, Discharge Card issued by Osmania General Hospital, Hyderabad however shows that there is dislocation of left elbow. Hence, considering the same and going by the rationale of the above said ruling, the loss of earnings of the petitioner/ appellant

¹ 2010(3)ALD 183 (DB)

can be taken for a period of two months. Hence, the award stands enhanced by another Rs.2,250/- towards the loss of earnings. This award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of Court below.

5. In the result, the appeal is partly allowed to the extent indicated above with proportionate costs. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

July 07, 2017
Kv

T.RAJANI, J



THE HON'BLE SMT. JUSTICE T.RAJANI



MACMA.No. 455 of 2006

July 07, 2017

Kv