

SMT JUSTICE T. RAJANI

MA CMA Nos.1993 AND 3309 of 2011

COMMON JUDGMENT:

MACMA.No.1993 of 2011 is filed by the appellant, who is the claimant, before the Court below, while MACMA.No.3309 of 2011 is filed by second respondent before the Court below.

2. The appellants in both the cases assail the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.1378 of 2008, dated 31.01.2011. While the claimant contends that the quantum is inadequate, the second respondent – insurance company contends that the compensation awarded is exorbitant.

3. Heard both the counsel.

4. The counsel for the claimant submits that the medical expenditure, evidenced by Exs.A7 and A8, is to an extent of Rs.63,323/-, but the Court below awarded only Rs.60,000/- and it did not spell out any reason for disallowing the remaining part of the medical bills over and above Rs.60,000/-. Hence, Rs.63,323/- is awarded under the head medical expenditure.

5. The counsel for the claimant also contends that the compensation awarded towards pain and suffering, which is Rs.10,000/- is also not adequate. The claimant sustained an injury to his right leg, which is a fracture injury and he took treatment as inpatient. Hence, considering the nature of the

injury, this Court awards another Rs.15,000/- towards pain and suffering. In all, the claimant is entitled to Rs.25,000/- towards pain and suffering.

6. As regards, the disability sustained by the petitioner, the counsel for second respondent-insurance company, contends that there is conflicting evidence on the aspect of disability, by two Doctors. The Doctor, who treated the petitioner and who was examined as PW3, stated that the disability is only 25%, while the Doctor, PW4, who did not treat the petitioner and who only assessed the disability, stated that it is 35%.

7. However, the nature of disability stated by PWs.2 and 3 is the same, it being restriction of movement of knee joints. The evidence of PW3 stands on a better footing than PW4 as he is the Doctor, who treated the claimant. Hence, 25% can be taken as the disability affecting the income of the claimant. The counsel for the claimant further makes a submission that the claimant got an employment with a salary of Rs.20,000/-. But no one was examined with regard to the letter evidencing the employment of the claimant, hence, the same cannot be relied upon. 25% of the disability would result in loss of Rs.3,000/- per month as the monthly income of the claimant was taken as Rs.12,000/- per month by the Court below by following the decision of the Supreme Court in *Sarala Verma and others v. Delhi Transport Corporation and another*¹. The annual loss of income would then be Rs.36,000/-. The same multiplied with

¹ 2009 ACJ 1298

‘18’, which is the multiplier relevant for the age of the claimant, would be Rs.6,48,000/-. Hence, the same is awarded towards loss of future income. The same is substituted for Rs.9,07,200/- under the head loss of future income.

7. The counsel for the claimant further submits that the Court below did not award compensation towards transportation expenditure. The claimant sustained injury to his leg, which would require a special transportation while going to and from the hospital. Hence, Rs.10,000/- is awarded towards transportation expenditure.

8. In all, the claimant is entitled to total compensation of Rs.63,323/- (medical expenses) + Rs.25,000/- (pain and suffering) + Rs.6,48,000/- (loss of future income) + Rs.10,000/- (transportation charges) = Rs.7,46,323/-, rounded off to Rs.7,46,400/-. The Court below, however, granted only Rs.4,00,000/- as compensation in spite of arriving at the figure of Rs.10,00,000/- and odd by considering that the claimant restricted his claim to Rs.4,00,000/- only. Now the law is well settled by virtue of the decision of the Supreme Court in *Rajesh v. Rajbir Singh*², wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court in *Adam Indur Mutemma vs. Rathod Peddita*³, held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

² (2013) 9 SCC 54

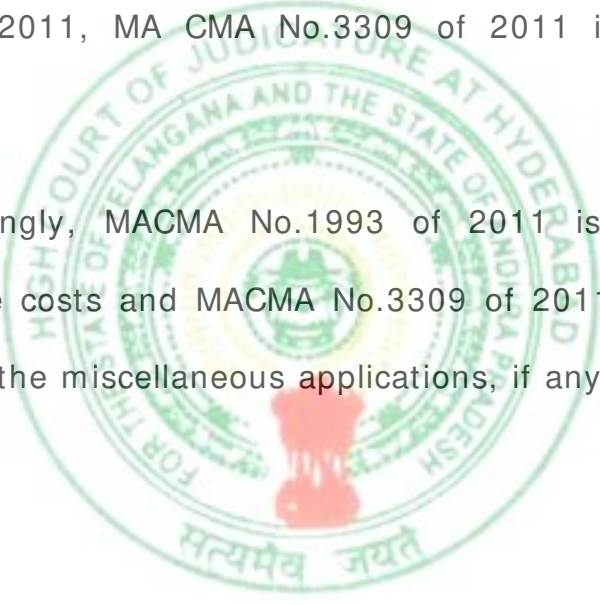
³ 2015(4) ALD 585 (LB)

9. To the extent indicated above, the award of the court below is modified by awarding compensation of Rs.7,46,400/- with proportionate costs. The claimant shall pay the differential Court fee on the enhanced compensation exceeding the claimed amount, before the court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

10. In view of enhancement of the compensation in MACMA No.1993 of 2011, MA CMA No.3309 of 2011 is liable to be dismissed.

Accordingly, MACMA No.1993 of 2011 is allowed with proportionate costs and MACMA No.3309 of 2011 is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 6, 2017
LMV


T. RAJANI, J