

SMT JUSTICE T. RAJANI

MACMA.No.1223 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the IV Additional District Judge, Kurnool in OP.No.525 of 2005 dated 31.07.2007 on the grounds that the Court below did not award adequate compensation and the Court below erred in not awarding any compensation towards future loss of earning, though evidence of P.Ws.5 and 6 establishes 40% physical disability.

2. Heard both the counsel.

3. Counsel for the appellant contends that the doctor, who was examined as P.W.6, spoke about the disability sustained by the claimant and 40% is the disability according to him, but the Court below awarded lump sum of Rs.25,000/- towards disability, which needs to be enhanced. On the other hand, counsel for the respondents contends that P.W.6 is not the doctor, who treated the claimant and hence, his evidence cannot be taken as the basis to conclude that there was disability, much less 40%.

4. P.W.6 is also a doctor, who is competent to assess the disability. It is not necessary that the disability should be assessed only by the doctor, who treated the patient, hence, there is no embargo on considering the evidence of P.W.6 and upholding the percentage of disability, as stated by him, which is 40%. However, the above view of this Court gets support from the ruling of the Apex Court in

RAJ KUMAR v. AJAY KUMAR AND ANOTHER¹ wherein it was held as under:

12. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross-examination with reference to the certificate.

Para 13. xxxx

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability.”

Hence, the disability certificate can very well be considered.

The claimant is stated to be a driver earning Rs.3,000/- per month apart from Rs.50/- as batta. The Court below did not assess the income of the claimant. However, the fact that the claimant is a driver is not put to a serious question. Hence, Rs.3,000/- can be conveniently taken as his monthly income and the same would get reduced to Rs.1,200/- per month due to 40% disability and as such, loss of annual income would be Rs.14,400/-. The age of the claimant is stated to be 40 years and the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION² is ‘14’. Hence, the loss of income due to permanent

¹ 2011 ACJ 1 (SC)

² (2009) 6 SCC 121

disability would come to Rs.14,400/- x 14 = Rs.2,01,600/-. Out of the said amount, Rs.25,000/-, which was awarded by the Court below has to be deducted, then the balance would be Rs.2,01,600/- - Rs.25,000/- = Rs.1,76,600/-.

5. Hence, the award of the Court below with respect to the amount awarded under the head disability is modified and enhanced to the extent indicated above. The rest of the award shall remain unaltered. This award shall relate back to the date of decree and the enhanced compensation 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.

October 24, 2017
DSK



T. RAJANI, J