

SMT JUSTICE T. RAJANI

MACMA.Nos.2520 and 333 of 2012

COMMON JUDGMENT:

MACMA.No.2520 of 2012:

This appeal is preferred by the appellants/APSRTC, who are the respondents before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in MVOP.No.1112 of 2009 dated 07.10.2011 on the grounds that the Court below did not consider the aspect of contributory negligence and that the award is also excessive.

2. Heard both sides.

3. The counsel for APSRTC contends that the Court below did not consider the aspect of contributory negligence. The counsel now contends that according to them, the claimant did not wait till the bus stopped, he got down the bus and hence, he contributed to the accident.

4. There is absolutely no evidence to support the said contention, whereas, to support the contention of the claimant that the accident occurred while he was getting down the bus, he got himself examined, apart from filing Exs.A1 and A2, which are the certified copies of the FIR and the charge sheet. Hence, there is absolutely no reason to differ with the finding given by the Court below, on the aspect of negligence.

5. As regards adequacy and inadequacy of the compensation, the counsel for APSRTC would contend that the cost of the artificial leg was stated to be only Rs.44,000/- but the Court below awarded Rs.2,64,000/-. But the evidence of P.W.4, who is the doctor, shows that though he stated that the cost of artificial leg is Rs.44,000/-, he stated that the leg need to be changed every two years. Hence, the approach of the Court below cannot be found fault with.

The civil miscellaneous appeal is dismissed.

MAMCA.No.333 of 2012:

6. This appeal is preferred by the appellant, who is the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in MVOP.No.1112 of 2009 dated 07.10.2011 on the grounds that the Court below did not award adequate compensation.

7. The counsel for the claimant contends that the Court below failed to consider the future hike in the income of the claimant.

8. The income of the claimant, as stated by the claimant is Rs.4,100/- and he is aged 40 years. Hence, following the decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] the future hike in income has to be taken as 25%. The loss of monthly income would come to Rs.4,100/- + (Rs.4,100/- x 25% = Rs.1,025/-) = Rs.5,125/- and the loss of annual income would come to Rs.5,125/- x 12 = Rs.61,500/-. The multiplier '15' adopted by the Court below is suitable for the age of the claimant. Hence, the loss of

future income would come to Rs.61,500/- x 15 = Rs.9,22,500/-.

Apart from the above, following the decision of the Supreme Court in GOVIND YADAV v. NEW INDIA ASSURANCE CO. LTD.¹ Rs.1,50,000/- is awarded towards loss of future amenities, which would include the marital discomfort as pleaded by the counsel for the appellant and Rs.1,50,000/- is awarded towards pain and suffering.

9. The counsel for the appellant would also contend that the Court below awarded only Rs.5,000/- towards transportation and extra nourishment.

10. In the considered opinion of this Court also, the said amount is meagre, as the injury being on the leg, which lead to amputation, the claimant might have required special transportation while travelling to and from the hospital. Hence, Rs.20,000/- is awarded under the said head. The Court below awarded Rs.50,000/- towards pain and suffering. Hence, the said amount is deducted from Rs.1,50,000/- awarded towards pain and suffering, then, the enhancement would be Rs.1,00,000/- under the said head. So also, Rs.5,000/- has to be deducted from Rs.20,000/-, which is awarded towards transportation charges. Hence, in all, the claimant is entitled to total compensation of (Rs.9,22,500/- - Rs.3,69,000 = Rs.5,53,500/-) + Rs.1,50,000/- + (Rs.1,50,000/- - Rs.50,000/- = Rs.1,00,000/-) + (Rs.20,000/- - Rs.5,000/- = Rs.15,000/-) = Rs.8,18,500/-. Though the compensation awarded exceeds the claim, now the law is well settled by virtue of the decision of the Supreme

¹ 2012 ACJ 28

Court in RAJESH v. RAJBIR SINGH², wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA³ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

9. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimant shall pay the differential court-fee. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 14, 2017
DSK



T. RAJANI, J

² (2013) 9 SCC 54

³ 2015(4) ALD 585 (LB)