

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.830 of 2008

JUDGMENT:

This appeal is directed against the award of the I Additional Metropolitan Session Judge cum XV Additional Chief Judge, Hyderabad in OP.No.1061 of 2005 dated 15.12.2007 on the grounds that the lower Court erred in arriving at a compensation of Rs.10,000/- as against the claim of Rs.1,00,000/-; the lower Court ought to have considered that the appellant sustained left leg fracture at 1/3rd mid involving tibia and fibula and it ought to have seen that due to fracture injuries, there is shortening of left leg and 20% disability. The lower Court erred in giving a finding that since P.W.2 did not treat the appellant and hence the disability assessed by P.W.2 cannot be considered.

2. At the time of hearing, the counsel for second respondent was not present. The appellant counsel contends that the fracture of leg is proved by the discharge certificate Ex.A4. The lower Court ought to have taken into consideration that said certificate fixes nexus between the disability stated by P.W.2 and the injury sustained by the appellant in the motor accident.

3. The lower Court considered the charge sheet, which is filed under Section 337 of the Indian Penal Code only and based on the fact of non-examination of the doctor, who treated the appellant and that Ex.A4 does not contain whether he sustained any grievous injury,

granted Rs.10,000/- under, all heads without specifying the details of the amounts under each of the heads mentioned therein.

4. Even though the charge sheet is filed under Section 337 IPC, the lower Court cannot shut its eyes in appreciating Ex.A3, which clearly shows that the appellant sustained fracture of both bones of left leg involving tibia and fibula. Charge sheet cannot be treated as a piece of evidence. The cross-examination of P.W.1 made by respondents does not discredit Ex.A4, hence, the lower Court ought to have taken into consideration the fracture injuries and ought to have awarded the commensurate amount towards compensation.

5. The appellant also filed x-ray film, which could have been considered. The lower Court did not consider the x-ray film on the ground that the concerned doctor was not examined. It may be difficult for the Court to appreciate the x-ray film with lay medical knowledge but Ex.A4 clearly shows the fracture injuries, hence, the same can be accepted. Hence, considering that the fracture injury is to both bones of the left leg, this Court is inclined to award Rs.15,000/- towards pain and suffering. Ex.A3 shows that the petitioner left against medical advice and there are no documents to show that he took further treatment in any other hospital. However, from the nature of injury, it can be understood that the petitioner must have been unable to attend his work for at least of period three (3) months. The income of the petitioner, as stated by him, is Rs.3,000/- per month, which in the considered opinion of this Court is not on the higher side. Hence, Rs.9,000/- is awarded under the head loss of income during the period of treatment, rest and recovery.

6. P.W.2 testified about the disability sustained by the appellant but the documents show that the petitioner left the hospital against medical advice. The nature of disability is in the form of malunion of the bones. The reason for malunion is not stated by P.W.2 or the appellant as P.W.1. The negligence of the appellant is blatant from the fact that he left against medical advice. There is no suggested amputation, which can be seen in Ex.A3, hence, without any evidence regarding the cause for malunion, this Court is not in a position to conclude that the disability is due to fracture injuries sustained in the motor accident. But, however, considering the fracture injury is to the leg of the petitioner and that he would require special transportation to and from the hospital, Rs.10,000/- is awarded towards transportation and other incidental expenditure.

6. Hence, in all, the appellant is entitled to compensation of Rs.34,000/- in addition to Rs.10,000/- awarded by the lower Court. Hence, the appellant is entitled to total compensation of Rs.44,000/- and the award made by this Court would relate back to the date of award passed by the lower Court. The rest of the award needs no interference.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

February , 2017
DSK