

SMT JUSTICE T. RAJANI

MACMA No.2513 of 2013

JUDGMENT:

This appeal is filed by the appellant, who is the claimant before the Court below, assailing the judgment of the II Additional Chief Judge, City Civil Court, Hyderabad, in OP No.1264 of 2009, dated 17.12.2012, on the ground that the court below did not award adequate compensation.

2. Heard the counsel for the appellant as well as the counsel for the respondents.

3. A perusal of the judgment of the Court below shows that it did not believe the evidence of PW2 with regard to the disability, which is 90%, considering that PW2 is not a member of the medical board. But there is no dispute about the fact that the petitioner sustained brachial plexus injury, due to which his right hand is totally disabled. He stated that the injuries sustained by the claimant affects his avocation as heavy motor vehicle driver. The injury sustained by the petitioner would affect his avocation to the extent of 90%, if not more. Hence, there need not be any difficulty to disbelieve the evidence of PW2.

4. The income, as stated by the claimants, is Rs.6,000/- per month. There need not be any reason to disbelieve the said income in view of the settled legal position by the ruling of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.¹ wherein it was held

¹ AIR 2014 SC 1052

that Rs.6,500/- can be taken as the monthly income of a Vegetable Vendor. Hence, 90% of Rs.6,000/- works out to Rs.5,400/- per month.

5. Following the latest 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] 40% of the future hike in income is also to be considered, as the deceased is aged 27 years. Then the loss of future income would come to Rs.7,560/- and the loss of annual income would come to Rs.90,720/-. The same multiplied with the multiplier '17', which is relevant for the age of the petitioner by following the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION², would come to Rs.90,720/- X 17 = Rs.15,42,240/- towards loss of income due to disability. Hence, the same is awarded under the head loss of income due to disability. Hence, the claimant is entitled to total compensation of Rs.15,42,240/- + Rs.40,000/- (already awarded) + Rs.40,000/- (already awarded) + Rs.10,000/- (already awarded) + Rs.25,000/- (already awarded) = Rs.16,57,240/-.

6. The claim of the claimant is only Rs.16,20,000/-. Though the compensation granted exceeds the claim amount, now the law is well settled by virtue of the decision of the Supreme Court in RAJESH v. RAJBIR SINGH³, wherein it was held that the compensation has to be just and it can exceed the claim amount.

² (2009) 6 SCC 121

³ (2013) 9 SCC 54

This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA⁴ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

7. To the extent indicated above, the award stands modified. 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.

Accordingly, the MACMA is partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 19, 2017
LMV



T. RAJANI, J

⁴ 2015(4) ALD 585 (LB)