SMT JUSTICE T. RAJANI

MACMA No.930 of 2012

JUDGMENT:

This appeal is filed by the appellant, who is the claimant before the court below, assailing the judgment of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Ranga Reddy District, L.B.Nagar, Hyderabad, in MVOP No.1349 of 2007, dated 15.06.2010, on the grounds that the court below did not appreciate the aspect of disability properly and awarded a very meagre compensation.

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

3. The counsel for the appellant contends that the court below did not consider the disability, as stated by PW2-Doctor, which is 35%.

4. A perusal of the evidence of PW2 shows, that except stating that the physical disability is to the extent of 35%, he did not, at least, mention whether it is temporary or permanent. He also does not explain the nature of disability. His evidence shows that further surgery is required. Whether after the said surgery, the disability, which he observed, would be reduced or not is also not stated by him. Hence, with all the above lapses in the evidence, there cannot be any error found in the approach of the court below in taking 15% as the disability.

4. However, the counsel for the appellant contends that the income of the claimant was not taken in accordance with the law settled by the Supreme Court. He relies on the ruling of the Supreme Court in *Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.,*[1] to contend that Rs.6,500/- has to be taken as monthly income of the claimant, who is doing business and also working as fitter. Hence, going by the above ruling, Rs.6,500/- is taken as the monthly income of the petitioner. 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],* the future hike of income of 25% also has to be considered being the age of the claimant is below the age of 50 years. After considering the hike of 25%, the monthly income of the claimant would come to Rs.8,125/-. 15% of the said income would come to Rs.1,218/- and the loss of annual income would come to Rs.14,616/-. The multiplier relevant for the age of the claimant as per the decision of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation*[2] is '14'. Hence, the same multiplied with '14' would come to Rs.2,04,624/-. The same is awarded towards loss of future income to the claimant/appellant.

5. The counsel also contends that the court below did not consider the evidence of PW2 with regard to the cost of future surgery. PW2 stated that the claimant might be required to incur Rs.1,50,000/- for replacement of left knee, but he did not

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[1] AIR 2014 SC 1052
[2] (2009) 6 SCC 121

explain the details for incurring of Rs.1,50,000/-. When according to his own evidence, the claimant did not incur such expenditure for the whole of the treatment, which involved fixation of screw and Hybrid Illizarov fixation and skin grafting, he cannot be assumed to be incurring such expenditure for replacement of knee. The whole expenditure incurred by the claimant, according to the counsel for the claimant, is only Rs.1,08,000/-. Hence, in the above circumstances, the evidence of PW2 that he would be required to incur Rs.1,50,000/- for future surgery cannot be relied upon. However, taking into consideration that the future surgery is nevertheless required, Rs.60,000/- can be awarded towards future surgery.

6. The court below, though considered the medical bills, which are to an extent of Rs.55,965/-, awarded only Rs.40,000/-. The reason stated by the court below is that Rs.15,000/- and Rs.10,000/-, which are shown as items 68, 63 and 64 are nothing but advance receipts and found that the said amounts cannot be awarded. But the counsel for the appellant takes this Court to the evidence of PW3, who is the billing Manager of M/s. Sai Bhavani Hospital, where the claimant was treated, wherein he stated that he received Rs.55,965/-. Hence, there need not be any reason to disbelieve the evidence and the balance amount of Rs.15,965/- is awarded towards medical expenditure incurred by the claimant.

7. The counsel also contends that under Ex.A10, the claimant filed bills, which are to an extent of Rs.1,12,423/- and that the

court below did not take up any discussion on the said bills. The evidence of PW3 shows that the outside medical bills were not included under Ex.A5. The cross-examination does not assail the bills under Ex.A10. Hence, considering the evidence of PW3, the above bills also need to be considered. Hence, the said amount being Rs.1,12,423/- is also awarded towards the medical expenditure incurred by the petitioner.

8. The counsel also contends that the compensation awarded towards pain and suffering is not adequate, it being only Rs.5,000/-. In the light of the nature of the injuries, this court opines that awarding another Rs.15,000/- towards pain and suffering would meet the ends of justice. So also, towards loss of amenities, the court below awarded only Rs.5,000/-. The evidence of PW2 shows that there is disability to an extent of 35%. Even if it is considered that the said disability would be reduced after future surgery, till then there would be loss of amenities of life, which can be compensated with another Rs.10,000/-.

9. Hence, the award stands enhanced by Rs.4,18,012/-, which can be rounded off to Rs.4,18,000/-. 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 Singh*[3], 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*

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[3] (2013) 9 SCC 54

Peddita[4] held that the compensation amount can exceed the claimed amount, subject to payment of court-fee. The rest of the award of the court below is left undisturbed. The award shall relate back to the date of decree and the enhanced compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

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

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T. RAJANI, J

December 19, 2017
LMV

[4] 2015(4) ALD 585 (LB)