

SMT JUSTICE T. RAJANI

MACMA.No.159 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the IX Additional District and Sessions Judge, Visakhapatnam, in OP.No.253 of 2004 dated 28.10.2005 on the grounds that the Court below erred in observing that in view of the injuries sustained by the claimant the tailoring work, which she was doing before the accident was not affected; it ought to have seen that the tailoring work includes cutting but in view of the injuries to the hand, the claimant cannot do the cutting work; the Court below erred in observing that there is no permanent and partial disability and awarded very less amount under the head loss of earning during the period of treatment for more than six months and the Court below erred in disbelieving the evidence of P.W.2 and the disability certificate.

2. Heard counsel for the appellant. None appears for the respondents.

3. The counsel for the appellant, even at the stage of appeal, is not in a position to explain the discrepancies that were pointed out by the Court below.

4. The impugned judgment shows that claimants made a claim under separate heads for each of the loss caused due to the injuries. For the claim of Rs.30,000/- under the head loss of earning, Rs.4,200/- was awarded as compensation.

5. The contention of the counsel for the claimant is that the claimant has been under treatment for several years and the evidence of P.W.2 would show the same. But the Court below did not believe the evidence of P.W.2 in the light of the fact that P.W.1 did not mention about the facts stated by P.W.2 i.e. with regard to the surgery conducted in the year 2003.

6. A perusal of the evidence of P.W.2 would lead to concurrence with the opinion of the Court below. According to him, he conducted surgery on 03.11.2003; he is an Assistant Professor in KG Hospital, Visakhapatnam. According to him, plates were fixed with screws for the union of the fractured bones during the surgery; he conducted surgery in Sitarama Nursing Home; the claimant was under his care till 30.11.2003; he issued Exs.A9 and A10; he also assessed the disability as 20% and issued disability certificate. But, however, he stated that the claimant can attend to the regular works, however, with difficulty. In the cross-examination, it was illustrated that he was not the owner or director of the Sitaram Nursing Home and that he is only a consultant doctor and on his advice, the claimant joined the said nursing home; he collected amount directly from the claimant and later paid to the nursing home authority.

7. As against the evidence of P.W.2, the documents issued by him can be perused. There are two documents issued by P.W.2 i.e. one is dated 30.11.2003 and the other is dated 11.07.2005. Even if the document, which is marked as Ex.A9 dated 30.11.2003 is considered as the document pertaining to surgery conducted by him in the year 2003, there is no mention about the document dated 11.07.2005 marked as Ex.A10, which is the charges for removal of implants. P.W.2

did state that any surgery was conducted on the claimant for removal of implants. According to P.W.1, who is the claimant, she took treatment in Seetharama Nursing Home from 05.11.2001 to 30.11.2001 and surgery was conducted to her upper arm and plates were fixed for the union of fractured bones.

8. From the above, it can be understood that the surgery was conducted during the period stated by her and in the year 2003 as stated by P.W.2. P.W.1 does not speak about any surgery conducted in the year 2003 but she spoke about the surgery for the removal of implants and states that it was in the month of July 2004. Hence, admittedly, there is no consistency between the evidence of P.W.1 and P.W.2 with regard to the dates of surgery and there is no consistency between P.W.2 and the documents issued by him with regard to the dates stated by him. Hence, in the above circumstances, the disbelief expressed by the Court below cannot be found fault with. There is no explanation coming from appellant's counsel even at this stage.

9. The Court below awarded Rs.4,200/- for loss of earning by considering the monthly income of the claimant as Rs.2,100/- per month. The same can be enhanced by another Rs.1,800/- by considering that the income of the claimant would be Rs.3,000/- per month and two months can be taken as the period for treatment, rest and recovery, as there is no cogent evidence to support the contention of the claimant that she was under treatment for several months. The Court below awarded Rs.1,000/- towards transportation as per the claim made by the claimant. Hence, there is no need to interfere with the same. The Court below also awarded Rs.15,000/-

towards extra nourishment and medicines; the medical bills filed by the claimant are for an amount far lesser than Rs.15,000/-. Hence, there is no need to for any further enhancement of the said amount. For pain and suffering of the claimant, the Court below awarded only Rs.5,000/- which in the considered opinion of this Court is very low in the light of the two fracture injuries sustained by the claimant. Hence, the same is enhanced by another Rs.25,000/-. The disability sustained by the claimant is also not proved. The disability certificate does not specify the nature of disability even though P.W.2 issued the said certificate, it does not explain the nature of disability except stating that the claimant would be able to do her work normally but with difficulty. However, the Court below awarded Rs.30,000/- towards loss of amenities and the same would take care of the said inconvenience. In the absence of any cogent evidence regarding the disability, no amount can be granted towards loss of future income due to disability.

10. Hence, the award of the Court below stands enhanced by Rs.26,800/- with proportionate costs. 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.

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

T. RAJANI, J

December 6, 2017
DSK