

SMT JUSTICE T. RAJANI

MACMA.No.302 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the I Additional District Judge, Vizianagaram in OP.No.118 of 2002 dated 28.12.2005 on the grounds that the Court below did not consider the evidence of P.W.2, who is a qualified doctor and awarded a meagre amount by misinterpreting Exs.A6 and A7, which are issued by P.W.2; the Court below also erred in taking Rs.50/- per day as the income of the claimant.

2. Heard both the counsel.

3. Ex.A2, which is the injury certificate of the claimant, can be taken as the basis to understand the nature of the injuries sustained by the claimant. Four injuries are mentioned in the said certificate, which are in the form of laceration, abrasion and contusion. The claimant seems to have undergone X-ray on 17.04.2000 and the opinion given in Ex.A2 is based on the said X-ray and after perusing the X-ray, the opinion given is that the injuries are simple in nature and they might have been caused by contact with blunt object. As against the said certificate, the evidence of P.W.2 is brought forth before the Court below, who testified that the claimant was admitted in his hospital on 19.04.2000 and one fracture was diagnosed on the pelvis and another injury is stated to be foreign body left hand. According to his evidence, surgery was conducted and plaster of paris was applied on the left leg. The evidence of P.W.2 does not convey any

sense. While the fracture is stated to be on the pelvis, he testifies that plaster of paris was applied on the left leg. Absolutely there is no explanation as to why plaster of paris had to be applied on the left leg, which did not have any fracture injury.

4. Moreover, Ex.A2 is dated 15.04.2000 i.e. the date of accident, and as already observed, it does not disclose any fracture injuries. The admission in the hospital of P.W.2 is on 19.04.2000. There is a gap of four days between the date of accident and admission of the claimant in the hospital of P.W.2. If the claimant had really sustained fracture injuries, he would not have been in a position to move without being admitted in the hospital. There is no evidence, by the claimant, as to the treatment taken by him from 15.04.2000 to 19.04.2000. Hence, the opinion expressed by the doctor in Ex.A2 casts a serious doubt on the evidence of P.W.2 and the entire case of the claimant. But, however, it cannot be disputed that the claimant sustained four simple injuries.

5. Counsel for the appellant contends that only Rs.5,000/- is awarded for the simple injuries and the same can be enhanced. Hence, considering the injuries evidenced by Ex.A2, another sum of Rs.5,000/- is awarded towards pain and suffering caused by the said injuries. Counsel for the appellant also contends that Court below took only Rs.50/- as the income of the claimant per month, which can be taken as Rs.100/- per day. There need not be any reason to dismiss the said contention. Hence, Rs.3,000/- can be taken as the monthly income of the claimant. The Court below observed that 10 days would be the rest period for the claimant to recover from the injuries. Hence,

Rs.1,000/- (Rs.100 x 10 = Rs.1,000/-) is awarded towards loss of income during the period of treatment, rest and recovery, which includes Rs.500/- awarded by the Court below.

6. In the result, the award of the Court below stands enhanced by Rs.5,500/- as indicated above and the rest of the award is left uninterfered with. This award shall relate back to the date of decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award by the Court below.

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

July 27, 2017
DSK



T. RAJANI, J