

SMT JUSTICE T. RAJANI

MACMA No.2872 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the IV Additional District Judge, Tirupati in MVOP.No.252 of 2007 dated 23.04.2010, on the grounds that the Court below did not award adequate compensation; it miserably failed to consider the documentary evidence and it did not believe the evidence that the claimant sustained 35% disability.

2. Heard both sides.

3. A perusal of the judgment of the Court below would show that it has considered that the injuries sustained by the claimant are grievous in nature and as against the claim of Rs.4,50,000/-, it granted only Rs.1,35,555/- after having expressed all compassion for the claimant.

4. The claimant is stated to have sustained lacerated wound over right forehead; abrasion over right lower leg and other multiple injuries. But the said injuries have lead to other complications. A Neuro Surgeon was examined as P.W.4 and P.W.3, who is also a doctor, was examined. X-ray was taken for the skull and depressed fracture in the right frontal bone and a contusion of brain were diagnosed. A surgery was done and he was attended on for few days. P.W.3 testified that there was 35% disability. His evidence was that the claimant sustained depressed fracture in right fontal bone and on clinical examination, there was post traumatic head ache, vertigo and

defective memory. He also stated that the claimant cannot do his work as Electrician. Thereby, he assessed 35% as the disability.

5. The counsel for the appellant now contends that 35% disability was not at all considered and the income of the claimant was also not arrived at.

6. The Court below did not arrive at the income, on the ground that except oral evidence of P.W.2, there is no other evidence. But the fact that the claimant was an electrician is not disputed seriously. Hence, in the light of the said fact, the income of the claimant ought to have been assumed. It can be taken as Rs.6,500/- per month in the light of the decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO. LTD.¹ wherein the income of a vegetable vendor was taken as Rs.6,500/-. Hence, there need not be any demur in accepting the said income. 35% disability would result in loss of monthly income at Rs.2,275/- and loss of annual income at Rs.27,300/-. The age of the claimant is stated to be 20 years and the multiplier relevant for his age is '18' as per the decision in SARLA VERMA v. DELHI TRANSPORT CORPORATION². Hence, the loss of future income to the claimant comes to Rs.27,300/- x 18 = Rs.4,91,400/-. Apart from the above, considering the plight of the claimant, Rs.50,000/- is awarded under the head loss of amenities of life. Hence, in all, the claimant is entitled to total compensation of Rs.5,41,400/- apart from Rs.1,35,555/- awarded by the Court below. Though the claim is for Rs.4,50,000/-

¹ AIR 2014 SC 1052

² (2009) 6 SCC 121

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 claimed amount. A constitutional bench of 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. Hence, the award of the Court below is modified as indicated above, with proportionate costs. The claimants shall pay the differential Court fee. 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. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 15, 2017
DSK

T. RAJANI, J



³ (2013) 9 SCC 54

⁴ 2015(4) ALD 585 (LB)