SMT JUSTICE T. RAJANI

MACMA.No.395 of 2006
and
CROSS OBJECTIONS (SR) No.38959 of 2006

COMMON JUDGMENT:

This appeal is preferred by the appellant, who is respondent No.2 in the Court below, assailing the order of Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Nalgonda, in O.P.No.359 of 2001 dated 28.10.2005 on the grounds that the Tribunal erred in assuming that the claimant was earning Rs.1,500/- per month, without any basis; it ought to have seen that P.W.2, doctor, who was examined on behalf of the claimant, stated that the claimant can use sewing machine with an electric motor and in the circumstance, it cannot be said that her future earnings were affected; the claimant can easily invest the amount for purchase of an electric motor and it would not cost more than Rs.1,000/-; hence, the compensation awarded under the head of loss of future earnings is exorbitant.

The claimant also assails the order by way of cross objections, on the ground that the Tribunal deducted 1/3rd amount towards personal expenses while calculating loss of earnings which is not proper, as, it is a case of injury, for which no deduction can be made from the earnings.

Heard both the learned counsel.

At the hearing, learned counsel for the appellant took me through the judgment of the Court below at paragraphs 12 and 13 wherein the discussion relating to the injuries and loss of earnings was taken up by the Court below. The evidence of P.W.2, who was working as Civil Surgeon (Ortho) in the District Head Quarters Hospital, Nalgonda, shows that the claimant sustained fracture of shaft femur on right side and compound fracture of both bones of right leg. She was operated on 19.10.2000 and was discharged on the next day at her request. According to his evidence, the fracture of shaft femur was healed and fracture of both bones of right leg was also healed but it was malunited and infected. He spoke about the assessment of disability of the claimant who appeared before the Medical Board. He also spoke about the admission of the claimant in Osmania General Hospital based on Ex.A.4 issued by the said hospital. Ex.A.4 shows that the claimant was operated and her thigh bone was fixed with a K. Nail and her leg bones were fixed with external fixator. It also shows that she was again operated on 05.03.2001 and V. nail was inserted. The case sheet of the claimant was also marked as Ex.C.1. The disability certificate - Ex.A.5 was also filed. P.W.2 deposed that because of the nature of leg injury, the bones are exposed and directly communicated to exterior, due to which the claimant suffered complications and that there was an infection.

He further deposed that once a bone is infected, the outcome cannot be predicted and persistent wound discharge would be a menace to the patients and their attendants; it also demands regular dressing and incurs lot of expenditure towards drugs and medicines. He also deposed about the limping of right leg of the claimant and stated that the same would result in inability of the claimant to run sewing machine manually. The counsel points out, that in the cross-examination, P.W.2 admitted that the claimant can run a sewing machine with the help of an electric motor.

Having considered the evidence of P.W.2, the Court below awarded Rs.75,000/- towards pain and suffering, loss of expectation of life and loss of amenities of life. In my considered opinion, the said amount is not at all exorbitant. In the light of the evidence of P.W.2, it can be said that the claimant is put to loss of amenities of life and the injury though healed is a constant menace to her. The dressing of a wound on regular basis requires lot of expenditure, apart from pain and suffering. Hence, viewed from any angle, the said amount awarded towards pain and suffering, loss of amenities of life and loss of expectation of life, cannot be termed as exorbitant.

The income assessed by the Court below is Rs.1,500/- per month. The evidence of P.W.1, claimant, shows that she was earning Rs.3,000/- per month. The Court below did not however believe the said evidence and took only Rs.1,500/- as the monthly income of the claimant which can be considered as on the low side. The law with regard to the income of a woman is well settled and the services of a woman, who is not even employed, are also valued at Rs.3,000/- per month. Hence, adoption of income at Rs.1,500/- per month by the Court below cannot be sustained and Rs.3,000/- can straight away be taken as the income of the claimant.

The disability as stated by P.W.2 was accepted by the Court below. The contention of the appellant's counsel that the evidence of P.W.2 is that an electric motor can be fixed to the sewing machine which would enable the claimant to run the sewing machine without the help of her leg, does not appeal to my mind as it is the prerogative of a person to choose the method of working. Moreover, the claimant got used to the sewing machine manually and it would take time for her to get accustomed to a sewing machine with an electric motor. It is absolutely her choice. Hence, it cannot be held that P.W.2, who is not an expert on sewing machines, is competent to testify that the claimant can use sewing machine with an electric motor. Hence, considering 30% as the disability and Rs.3,000/- as the monthly income of the claimant, as the Court below awarded only an amount of Rs.64,800/- towards loss of future income to the claimant, the same is enhanced to Rs.1,29,600/-.

The counsel for the appellant while agreeing that it was not raised in the grounds of appeal about the driver of the crime vehicle not holding valid driving licence as on the date of accident, argues that the driver of the offending vehicle was not holding driving licence as on the date of the accident though it was renewed after the date of accident. The Court below however considered the said aspect and ordered the appellant only to pay and recover the amount from the first respondent which is on proper lines.

Hence, no interference is required in the order of the Court below except to the extent indicated above. The order shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the order of the Court below.

In the result, the appeal is dismissed and cross objections are partly allowed, with proportionate costs.

Pending miscellaneous petitions, if any, shall stand closed.

SMT. T. RAJANI, J

23rd JUNE, 2017.

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