

SMT JUSTICE T. RAJANI

MACMA No.4584 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, assailing the judgment, dated 30.07.2004, of the II Additional Chief Judge, City Civil Court, Hyderabad, passed in OP.No.2399 of 2002, on the grounds that the court below did not award adequate compensation and did not consider the disability in a proper perspective.

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

3. This is a case of injuries, wherein Rs.2,00,000/- was claimed as compensation. The court below, by considering the merits of the case, awarded compensation of Rs.1,05,000/-.

4. The counsel for the appellant contends that the evidence of PW2-Doctor was very much available for the court to come to a conclusion that there was 50% disability. But he fairly concedes that as per the ruling of the Supreme Court when 50% is the disability stated by the Doctor pertaining to a particular organ of the body, 25% has to be taken as the disability pertaining to the whole body. The said ruling is in *Raj Kumar v. Ajay Kumar*¹.

5. The evidence of PW2 seems to be shaky and does not inspire the confidence of the court. In the first place, he is not the Doctor, who treated the petitioner. He is only the person,

¹ (2011) 1 SCC 343

who assessed the disability by examining the petitioner. According to the evidence of PW2, petitioner had non-healing fracture of femur and he cannot stand without support and cannot do any work. He had fracture of shaft femur and fracture shaft tibia for which surgery was done. There was shortening, but he did not measure the same. But the cross-examination brings out that by the time he examined the injured the injuries were healed. Except on the date on which the disability was assessed, the claimant did not appear before him any other time. A re-surgery was advised to the claimant. He admits that according to the radiologist report under Ex.A10, there is healing of fracture in the mid shaft of the right femur with internal fixation. It is clear that in Ex.A10 there is no mention of mal-union fracture in right femur. He expresses that healing of fracture does not make 100% anatomical position and it can be said that the healing is 75% to 80%. He also states that if there is over riding of bone of right femur it will reflect in X-ray. The cross-examination is pointed on the aspect of over riding of bones. There is absolutely no material to say that there is any overriding of the bones, as such. In the chief-examination, according to PW2, the percentage of disability depends upon healing and alignment of bone and movement of joints and fittings. He arrived at the disability, based on the x-rays, alignment of bone movement of femur and ankle.

6. In the light of the facts elicited in the cross-examination that according to Ex.A10, which is the radiologist report, there is healing of fracture in the mid, that there is no mention made

about the mal-union of right femur, as stated by him, the evidence of PW2 cannot be taken as a basis to conclude that the petitioner sustained 50% permanent partial disability, which disabled him to do any work. For the said reason, the ruling of the Apex Court reported in *Dixit Kumar and another vs. Om Prakash Goel*² is not found to be relevant. The disability can be taken as 25% as pertaining to the whole body.

7. The counsel for the appellant submits that 40% has to be the hike of the income of the petitioner, which is acceptable as per the Ruling of the Supreme Court in *National Insurance Company Ltd., vs. Pranay Sethi* in Special Leave Petition (Civil) No.25590 of 2014. The lower court did not arrive at the income of the petitioner properly. Petitioner is sated to be a tailor aged 22 years and, according to him, he was earning Rs.4,000/- per month.

8. The counsel for the respondents contend that as there is no evidence with regard to the income of the petitioner, only notional income has to be taken

9. Said contention does not seem to be very sound. When the petitioner is testifying that he is a tailor and there is no reason to disbelieve his evidence and when his evidence is not discredited, the same can be accepted. But as there is no evidence with regard to the income, this court is inclined to take Rs.3,000/- as the monthly income of the petitioner. With 40% of the hike, the standardised income would be Rs.4,200/- (Rs.3,000/- X

² 2017 ACJ 2057

40/100). 25% out of which comes to Rs.1,050/- per month and Rs.12,600/- per annum. The multiplier relevant for the age of the petitioner is 18. Hence, Rs.12,600/- X 18 = Rs.2,26,800/-. The same is awarded towards loss of future income of the claimant.

10. The court below also did not award any amount towards loss of future amenities. Hence, another Rs.10,000/- is awarded towards loss of future amenities of life.

11. Considering the disability, the medical expenses as proved by the claimant, were awarded. The counsel submits that the medical bills are only for about Rs.5,000/-. The compensation towards pain and suffering is also adequately awarded, as Rs.35,000/- is awarded towards fractures and another Rs.10,000/- towards pain and suffering and transportation and medical attendant charges. The injuries are on the same leg. Hence, this court opines that the above amount would take care of both the pain and suffering and transportation expenditure.

12. The court below awarded Rs.5,000/- towards loss of income to the claimant. But the court below did not discuss about the period of treatment or the income of the claimant. Now this Court has taken the income of the claimant as Rs.3,000/- per month. The nature of injuries would suggest that he was unable to attend the work for three months. Hence, Rs.9,000/- is awarded towards loss of income during the period of treatment from that Rs.5,000/- has to be deducted making it Rs.4,000/-.

13. The claimants are entitled to Rs.2,26,800/- + Rs.10,000/- + Rs.4,000/- = Rs.2,41,800/-, out of which Rs.50,000/- has to be deducted as the said amount is awarded towards the 50% disability and hence, the loss of income would come to Rs.2,41,800/- – Rs.50,000/- = Rs.1,91,800/-. Hence, the enhanced amount comes to Rs.1,91,800/- (In all, the claimants would be entitled to total compensation of Rs.1,91,800/- (awarded hereunder) + Rs.35,000/- (fractures) + Rs.10,000/- (pain and suffering) + Rs.5,000/- (medical expenses) = Rs.2,41,000/- over and above the claim of Rs.2,00,000/-). Though the enhanced amount exceeds the claimed amount, the same can be awarded following the ruling of the Constitutional Bench Judgment of this court in *Adam Indur Mutemma vs. Rathod Peddita*³, wherein it was held that the compensation amount can exceed claimed amount subject to payment of court-fee.

14. In all, the claimant is entitled to enhanced compensation of Rs.2,26,800/- (loss of future income) + Rs.10,000 (loss of income) + Rs.4,000/- (loss of income awarded hereunder) = Rs.2,41,800/- - Rs.50,000/- (disability) = Rs.1,91,800/- with proportionate costs. The rest of the award is left uninterfered with. The appellant/claimant shall pay the court fee on the enhanced compensation before the court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

³ 2015(4) ALD 585 (LB)

The appeal is, accordingly, partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

November 16, 2017
LMV

