

SMT JUSTICE T. RAJANI

MACMA.No.624 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the XXI Additional Chief Judge, Hyderabad, in OP.No.1967 of 2005, dated 14.11.2007, on the grounds that the Court below erred in dismissing the petition, considering that there is no permanent disability and that the petition is not maintainable under Section 163A of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Heard counsel for the appellant. There is no representation for the respondents.

3. This is a case of injuries. The Court below dismissed the claim petition, considering that the same was filed under Section 163A of the Act and that unless there is a death or permanent disability, the claim petition is not maintainable under Section 163A of the Act. But the said understanding of the Court below seems to be completely misconceived.

4. The claimant came forward with an application on the ground that there is permanent disability, which would entail his claim under Section 163A of the Act. It is not the proof of permanent disability that is a precondition for filing the complaint. The maintainability of the petition would be gone into at the time of its filing and if there is *prima facie* material, which would be in the form of the averments of the petition, the petition would be

entertained under a particular provision of law. Whether the facts stated in the petition are proved or not is a result of the subsequent exercise of taking evidence. Hence, the approach of the lower Court in dismissing the claim petition, after coming to a conclusion that the permanent disability is not proved, is completely erroneous. Therefore, the judgment of the lower Court cannot be sustained.

5. The Court below dismissed the petition without any further adjudication on compensation. Instead of remitting the matter to the lower Court for assessment of the compensation, considering the longevity of the case, I am inclined to dispose of the matter by taking up the exercise of assessment of compensation.

6. The injuries sustained by the appellant are fracture to both bones of right leg. The evidence of the doctor - P.W.2 proves the same. The evidence of P.W.2 also shows that the fracture was operated on 28.10.2005. Hence, considering the nature of the injury and the nature of treatment, Rs.20,000/- is considered as adequate towards 'pain and suffering'. The appellant filed medical bills under Exs.A.7, A.8 and A.9, which are to a tune of Rs.42,028/-. The nature of the injury and the hospital at which the petitioner took treatment, which is a private hospital, would probablise the said expenditure and the same is awarded under the head 'medical expenditure'. The appellant is also entitled for compensation under the head 'transportation expenditure' as he sustained injury to his leg and would require a special transportation while going to and from the hospital. Therefore,

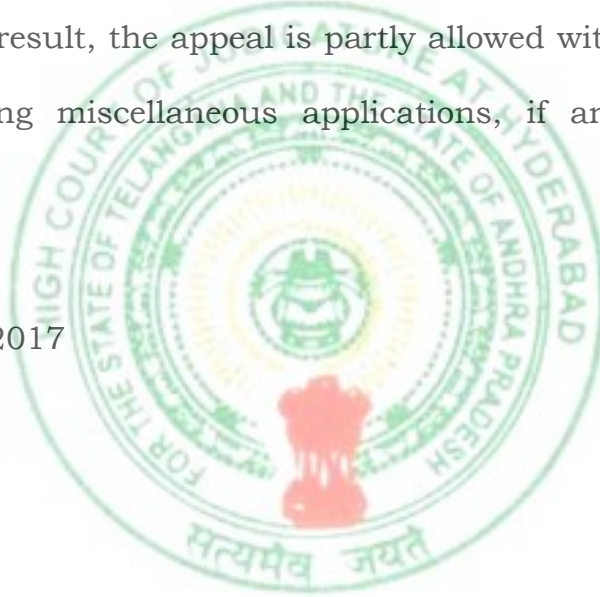
Rs.10,000/- is awarded under the head 'transportation expenditure'. The evidence of P.W.2 with regard to the disability is that the appellant was examined by him on the previous date of his giving evidence. His evidence shows that a surgery was conducted by open reduction and internal fixation, with interlocking nail and bone grafting was done. The evidence of P.W.2 further shows that there was a difficulty for the appellant to run and squat. He also found slight limping, apart from restriction of movement of ankle and knee. He stated that the appellant sustained 20% to 25% disability. The appellant claimed to be a supervisor and hence, his avocation may not involve running and squatting. Hence, 15% can be considered as the disability affecting the avocation of the appellant. The appellant filed his salary certificate showing his salary as Rs.5,000/- per month. He did not choose to prove the same by examining the person, who issued the salary certificate or any one concerned with the disbursement of his salary. Hence, Rs.3,000/- is taken as the monthly income of the appellant. 15% of the disability would result in loss of Rs.450/- per month and Rs.5400/- per annum. The age of the appellant was 36 years at the time of accident and the appropriate multiplier for his age, as per the decision of the Supreme Court in **SARLA VERMA v. DELHI TRANSPORT CORPORATION**¹, is '15'. After applying the multiplier '15', Rs.81,000/- (Rs.5400/- x 15) is awarded towards loss of future income of the appellant. Considering the disability, Rs.10,000/- is awarded towards loss of future amenities of life.

¹ (2009) 6 SCC 121

The nature and period of treatment would suggest that he might have been unable to attend his work for at least three months. Hence, Rs.9,000/- is awarded towards loss of income during the period of treatment. It comes to Rs.1,72,028/- and the same is rounded off to Rs.1,72,000/-. Thus, the appellant is awarded a total compensation of Rs.1,72,000/-. The said amount shall be paid by respondents 1 and 2 jointly and severally along with interest @ 7% per annum from the date of filing of the petition till the date of deposit. After deposit, the appellant shall be entitled to withdraw the said amount.

7. In the result, the appeal is partly allowed with proportionate costs. Pending miscellaneous applications, if any, shall stand closed.

Date: 23.10.2017
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T. RAJANI, J