

SMT JUSTICE T. RAJANI

MACMA.No.738 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the II Additional Chief Judge, City Civil Court, Hyderabad in OP.No.104 of 2004 dated 17.09.2007 on the grounds that the Court below failed to look into the evidence of P.W.3, who categorically stated that the disability of the claimant is to an extent of 60%; the Court below ought to have looked into the disability certificate and the X-rays; the Court below failed to look into the records on the ground that summons were sent to the Orthopaedic Surgeon, who treated the victim girl, but due to VRS taken by the said Doctor, P.W.3 had to depose before the Court below; the Court below failed to grant compensation towards future prospects, transportation, clothing etc. and the Court below erred in disbelieving Ex.A6 original quotation showing the cost of artificial leg and the Court below also failed to grant any compensation towards future medical expenses, as the claimant has to change her artificial leg every year till she attains the age of 25 years.

2. Heard both sides.

3. The counsel for the appellant relied on the following decisions in support of his contention that the award of the Court below is not adequate:

V. MEKALA v. M. MALATHI¹ wherein the Supreme Court was dealing with a case of a brilliant student, who secured 1st rank in 10th standard and was studying 11th standard. By considering the excellent academic record of the claimant, the Supreme Court enhanced the compensation awarded by the Court below. But, in this case, there is, admittedly, no evidence about the academic performance of the claimant. Hence, the said decision cannot be applied to the facts of the case.

GOVIND YADAV v. NEW INDIA INSURANCE CO. LTD.² wherein the claimant was aged 24 years, hence, the said decision also does not stand relevant to the facts of this case.

KISHAN GOPAL v. LALA³ wherein the Supreme Court was dealing with the case of deceased, who was aged 10 years and proved to be assisting h/is father in agricultural operations. But, in the present case, there is no such proof; hence, the said decision cannot be pressed into service.

NAGAPPA v. GURUDAYAL SINGH⁴ wherein the Supreme Court awarded additional compensation for recurring medical expenditure in case of amputation of right foot as it was observed that artificial leg has to be put for the right leg has and it has to be replaced every two to three years and in those circumstances, the Supreme Court felt it fit to award additional compensation for future medical expenditure.

¹ 2014 (5) ALD 42 (SC)

² (2011) 10 SCC 683

³ 2013 (6) ALD 59 (SC)

⁴ 2003 (1) ALD 1 (SC)

LATA WADHWA v. STATE OF BIHAR⁵ wherein the Supreme Court was dealing with the death of children in an accident and for children between 5 to 10 years of age and a compensation of Rs.2,00,000/- was held as appropriate. It was observed that prospective loss will find a valid claim provided that there is a reasonable expectation of pecuniary benefit if the child has lived and mere speculative possibility of benefit is not sufficient. Hence, the said decision also is not of good guidance. But, however, the award of compensation of Rs.2,00,000/- for the children age between 5 to 10 years can be taken as a guiding factor.

MALLIKARJUN v. DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD.⁶ wherein the Supreme Court was dealing with a case of amputation of right lower limb of 12 years old child. The Supreme Court laid down a formula by holding that if the disability is above 10% and up to 30% to whole body, Rs.3 lakhs compensation is to be paid; up to 60% Rs.4 lakhs; up to 90%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, Rs.6 lakhs. It also observed as under:

“While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be

⁵ (2001) 8 SCC 197

⁶ (2014) 14 SCC 396

work out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.”

NARENDRA SINGH v. NISHANT SHARMA⁷ wherein the Supreme Court was dealing with a case of amputation of right leg below knee of a person aged 22 years. Though the future loss of income arrived at in the said case may not be of good guidance, the amounts awarded under the other heads can be taken as guiding factor in this case also.

4. Of all the above cited decisions, the last two decisions can be relied upon, as on facts, they stand to be relevant. In MALLIKARJUN's case (6 supra), as already observed, it was held that Rs.4,00,000/- should be compensation awarded to a child, if the disability is 60%. In the present case, the disability of the claimant is stated to be 60% and the amputation was to the lower limb up to lower 1/3rd. The claimant got examined the doctor, who treated her, hence, 60% was taken as the disability by the Court below.

⁷ (2015) 14 SCC 353

Hence, Rs.4,00,000/- is awarded towards the loss caused due to permanent disability.

5. Taking help of the decision in NARENDRA SINGH's case (7 supra) an amount of Rs.50,000/- is awarded towards pain and suffering and Rs.1,00,000/- towards future medical expenses for whole life is awarded. The Supreme Court, in the said decision, held as under:

"..Since the appellant's leg is amputated below the knee, his chances of mobility reduce drastically. He will be deprived from attending social functions. His chances of getting married also get reduced to a great extent. Therefore, we further award Rs.3,00,000/- for loss of amenities and enjoyment of life including loss of marital prospects and marital happiness. We also award Rs.50,000/- for conveyance charges and cost of attendant in his old age since he will be requiring assistance for his basic chores as he grows old and also awarded Rs.50,000/- for food and nourishment..."

6. Hence, following the said decision, the appellant herein is also entitled to aforesaid compensation of Rs.3,00,000/- towards loss of amenities; Rs.50,000/- towards conveyance charges and cost of attendant and Rs.50,000/- towards food and nourishment. Hence, in all, the claimant is entitled to a compensation of Rs.4,00,000/- (permanent disability) + Rs.50,000/- (pain and suffering) + Rs.1,00,000/- (future medical expenses) + Rs.3,00,000/- (loss of amenities) + Rs.50,000/- (conveyance and attendant charges) + Rs.50,000/- (food and nourishment) = Rs.9,50,000/-, which is restricted to Rs.8,00,000/-, as per the claim of the claimant. 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.

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.

October 11, 2017
DSK

T. RAJANI, J

