

SMT JUSTICE T. RAJANI

MACMA.No.3414 of 2008

JUDGMENT:

The appellant, who is the claimant before the tribunal below, preferred this appeal aggrieved by the judgment of the IV Additional District Judge, Tirupati in OP.No.207 of 2005 dated 08.03.2007 importantly on the aspect of quantum of compensation.

2. Respondent No.1 did not enter appearance while respondent No.2, insurance company, though was added as a party, does not take any claim on it as there is no grievance expressed in the grounds of appeal with regard to the dismissal of the claim against the second respondent insurance company. Hence, the question that remains before this Court is with regard to the adequacy of compensation awarded by the tribunal.

3. A perusal of the judgment of the tribunal shows that Rs.25,000/- was awarded towards pain and suffering, which can be considered adequate in the light of the fact that the appellant sustained only one fracture injury to his right arm. With regard to medical expenditure, the tribunal, however, did not grant the expenses evidenced by Ex.A0 medical bills, considering that they are not proved accordingly. The claim being under beneficial legislation, strict rules of the Evidence Act cannot be pressed into. In all probability, the claimant is likely to incur the said expenditure. Moreover, P.W.2, who is the doctor, testified about the genuineness of Ex.A9 medical bills. Hence, the said amount of Rs.20,820/- is awarded towards

medical expenditure. So also the evidence with regard to the expenditure that the claimant would be incurring for future surgery for removal of nails, which were used in fixing the fracture, cannot be disbelieved. There is absolutely no reason to disallow the claim of expenses with regard to said future surgery. Hence, Rs.10,000/- is awarded towards future surgery.

4. The tribunal also did not award any amount with respect to loss of future amenities, in spite of the evidence of P.W.2, who spoke about the disability sustained by the claimant to the extent of 24%. Since respondent No.1 did not appear to offer any resistance, the disability, as proved by the claimant and as respondent No.2 does not have any reason to resist, as there is no liability fixed on it, the disability at 24% can be accepted as affecting the avocation of the claimant, who is stated to be an advocate clerk and who, in all probability, would be requiring his hand for executing his work.

5. The tribunal, in spite of there being evidence that the claimant was working as advocate clerk and in spite of there being his salary certificate, marked as Ex.A10, adopted notional income for the purpose of assessing the loss of future income. This Court does not see any reason to take a notional income where the claimant testified that he is working as an advocate clerk and in that background of facts, Rs.2,000/- is taken as his monthly income. The age of the claimant is stated to be 35 years and the multiplier relevant for the said age is 17. The loss of monthly income would be $\text{Rs.2,000/-} \times 24\% = \text{Rs.480/-}$ and loss of annul income would be $\text{Rs.480/-} \times 12 = \text{Rs.5,760/-}$.

The loss of future income on account of disability at 24% would come to Rs.5,760 x 17 = Rs.97,920/-.

6. The tribunal also did not choose to award any amount towards loss of income during the period of treatment, rest and recovery, which the claimant is likely to be put to. The nature of the injuries would suggest that the claimant might have been unable to attend his work at least for a period of 1½ month. Hence, the appellant would be entitled to compensation of Rs.2,000/- x 1½ = Rs.3,000/- towards loss of income during the period of treatment, rest and recovery. Hence, in all, the appellant is entitled to compensation as under:

1. Pain and suffering	Rs.25,000/- (awarded by tribunal)
2. Medical bills	Rs.20,820/-
3. Future Surgery	Rs.10,000/-
4. Loss of income	Rs.97,920/- (enhanced)
5. Loss of income for Period of treatment and recovery	Rs.3,000/-
6. Transportation and & incidental expenses	Rs.5,000/- (awarded by the tribunal)
Total	Rs.1,61,740/-
Rounded off:	Rs.1,61,700/-

In the result, the compensation awarded by the tribunal is enhanced from Rs.91,200/- to Rs.1,61,700/- with proportionate costs. This award shall relate back to the date of decree and the enhanced amount 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.

April 7, 2017
DSK

T. RAJANI, J

