

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.935 of 2008

JUDGMENT:

This appeal is preferred by the appellant who is the petitioner in the tribunal, dissatisfied with the order made by the VI Additional District Judge, Tirupati in MVOP.No.376 of 2004 on the grounds that the tribunal erred in granting amount towards medical expenses and erred in not granting any amount under the head loss of earning power; the tribunal ought to have seen that P.W.2, who is the competent doctor, categorically deposed that the appellant sustained 25% permanent disability.

2. After hearing the counsel for both the parties on the aspect of assessment of disability, a perusal of the evidence of P.W.2, who is Orthopedic Surgeon, Pooja Hospital, Tirupati, shows that he assessed the disability of the deceased, as mentioned under Ex.A5, permanent disability certificate issued by him. According to him, there was an amputation of fourth toe at tip of left foot and there was absence of soft cushioned skin of right heel and the right calcaneum bone is covered with only skin which is hyper sensitive to pressure and that the appellant cannot walk and cannot perform any work while standing for long time.

3. The amputation, stated by P.W.2, does not get connected to any of the injuries sustained by the appellant in the accident. Calcaneum, however, is related to heel. There is no evidence explaining the possibility of the injury on the calcaneum leading to amputation of toe.

Exs.A3 and A4, which are medical certificates of the appellant, do not spell any injury to the toe, which could have resulted in amputation. Ex.A3, which is the wound certificate, shows only a lacerated injury below chin and little finger and detachment of right calcaneal bone from surrounding tissue. There is no explanation by P.W.2 of the terms mentioned in Ex.A3 so as to understand whether any of the injuries lead to amputation of the fourth toe.

4. Counsel for the appellant could not also assert that the appellant sustained any injury on the toe, which led to the amputation, as stated by P.W.2. Strangely after having stated that the appellant sustained disability to the extent of 25% and that he cannot perform any work, in the cross-examination, P.W.2, categorically admits that the appellant is able to perform day to day functions as usual. However, the evidence of P.W.2 does not inspire confidence and hence, it cannot be taken as a basis for assessing the disability and awarding compensation.

5. A perusal of the order of the tribunal would show that only Rs.10,000/- was awarded towards pain and suffering, which in the considered opinion of this Court can be enhanced by Rs.5,000/-. The injury, being fracture injury to the leg, might have disabled the appellant for at least two months from attending his duties and the said period can be treated as the period of treatment, rest and recovery. As the petitioner is stated to be working as cleaner, in the least, his monthly income can be taken as Rs.3,000/- per month. Hence, the appellant would be entitled to a compensation of Rs.3,000/- x 2 = Rs.6,000/- towards loss of income during the period

of treatment, rest and recovery. Hence, the compensation awarded by the tribunal stands enhanced by Rs.5,000/- + Rs.6,000/- = Rs.11,000/-. In the result, the appellant is entitled to total compensation of Rs.17,000/- (awarded by the tribunal) + Rs.11,000/- = Rs.28,000/-. This award shall relate back to the date of decree.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand disposed of as infructuous. There shall be no order as to costs.

February 10, 2017
DSK

T. RAJANI, J

