

SMT.JUSTICE T.RAJANI
MACMA. No.788 of 2008
And
Cross Objections No.18641 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are respondents before the Court below, assailing the order dated 29.09.2007 passed in MVOP. No.48 of 2004 by the I Chief Judge, City Civil Court, Secunderabad, on the ground that in spite of there being no negligence on the part of the driver of the crime vehicle, the Court below mulcted the appellants with liability.

Heard the learned counsel on either side and perused the material on record.

The learned counsel for the appellants submits that there was no rash and negligent driving on the part of the driver of the crime vehicle. A perusal of the record would show that the driver of the crime vehicle was charge sheeted for the negligence. The manner of the accident shows that the claimant was proceeding to Hussain Sagar from Ranigunj on Yamaha Motor Cycle No.AP-4-A-808 along with his cousin on the said bike and when he reached opposite to Ranigunj bus stop, suddenly one Government black Ambassador car bearing No.AP-9-D-8767 came in high speed and in wrong direction and dashed against the claimant.

R.W.3 was examined to speak about the absence of negligence on the part of the crime vehicle but, unfortunately, she is not an eye witness for the accident. The charge sheet and complaint speak about the manner of accident and negligence on the part of the driver of the crime vehicle was concluded in the charge sheet. As already observed, the documents prove only negligence of the crime vehicle. Hence, in the above circumstances, there cannot be any reason to find fault with the findings of the Court below on the aspect of negligence. Hence, in view of

the above, this appeal is liable to be dismissed and accordingly is dismissed.

CROSS OBJECTIONS:

Cross Objections are filed by the claimant on the grounds that the compensation awarded is inadequate and the Court below failed to consider that the claimant sustained 20% permanent disability. A perusal of the evidence of P.W.2 would show that the claimant was admitted in the hospital on 08.09.2003 with fracture of femur, right side and grade II compound fracture both bones of right leg. After the admission, the claimant developed Hypoxia ARDS and Encephalopathy and he was shifted to acute medical care ward and he was put on ventilation and then he was operated on 16.09.2003. After his general condition was improved, he was discharged on 24.09.2003. Implants were fixed for the fracture of his right femur and he requires another operation for the removal of implants, which may cost him Rs.25,000/- to Rs.30,000/-.

The Court below, considering the nature of injuries and duration of treatment and pain and suffering, awarded a sum of Rs.50,000/- towards pain and suffering, which in my opinion is adequate.

The grievance of the claimant is with regard to the Court below awarding compensation for future loss of income caused due to disability by taking notional income. The claimant is stated to be a student and in support of his status he filed fee receipt. He was studying graduation. The disability, though is stated to be 20%, resulted only in difficulty of sitting. It is not known, at this stage, as to what avocation the claimant would be into. In all probability, it would be an avocation, which would involve sitting, as he would be probably taking up a white color job. When there is no concrete evidence on the future avocation and income, taking notional income cannot be said to be wrong. But, however,

the contention of the learned counsel for the claimant that the Court below did not award any amount towards loss of studies can be considered and Rs.5,000/- is awarded towards loss of studies due to the injuries.

The grievance with regard to awarding only Rs.10,000/- towards attendant and other expenses also can be taken care of by awarding another Rs.10,000/- towards transportation, by considering that the claimant might have required special transportation while going to and from the hospital as he sustained injuries to his legs. In the result, the award of the Court below stands enhanced by Rs.15,000/-.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

In the result, the Cross Objections petition is allowed in part with proportionate costs. Consequently, miscellaneous petitions, if any, stands closed.

JUSTICE T.RAJANI

Date: 11.08.2017
LSK