

SMT JUSTICE T. RAJANI

MACMA.No.1101 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the IV Additional District Judge, Guntur in OP.No.285 of 1993 dated 24.11.1997, on the grounds that the Court below awarded inadequate compensation; it erred in computing the compensation for permanent disability and it ought to have granted wages for the whole life period but erred in granting a meagre amount of Rs.5,000/- towards pain and suffering and Rs.2,000/- towards medical expenses.

2. Heard counsel for the appellant. Counsel for the respondent did not appear.

3. The claimant sustained injuries in the motor accident, which are fractures of both legs. The Court below did not make any discussion on each of the aspects and awarded Rs.62,246/- towards loss of income by considering the evidence of P.W.1 and Ex.A4, which is the letter addressed to the Court below by the Superintendent of Police. The Court below awarded Rs.5,000/- towards pain and suffering without any discussion on the nature of the injuries and Rs.2,000/- for medical expenses. By considering the disability at 25%, the Court below awarded a lumpsum of Rs.10,000/- without any scientific calculation.

4. The injuries are spoken to by P.W.3, who is the Professor of Orthopaedics in the Government Hospital, Guntur where the claimant

was treated. His evidence shows that the claimant sustained multiple injuries on the left ankle, foot and right leg and there were fractures found from the X-ray taken; right leg showed comminuted fracture upper 1/3rd of right tibia and thereafter, conservative treatment was given. So also skin grafting was done to the left heel and the claimant was discharged on 10.07.1992 i.e. after about 3½ months. Hence, all the above evidence would show that the claimant underwent a lot of pain and suffering. Hence, the amount of Rs.5,000/- can be conveniently enhanced to Rs.40,000/-. The medical expenses awarded at Rs.2,000/- needs no interference, as the claimant underwent treatment in government hospital, where probably no expenditure would be incurred. Moreover, there is no evidence with regard to the medical expenses. But the claimant must have incurred other incidental expenditure towards transportation etc. As he sustained injuries to both legs, he might have required special transportation while going to and from the hospital, hence, considering the same, a sum of Rs.10,000/- is awarded towards transportation.

5. The evidence of P.W.2 shows that the claimant resumed his duties after 12.11.1995, hence, though the evidence of P.W.3 shows that there is 25% disability, as it did not affect the avocation of the claimant, no amount was awarded towards loss of future income, which can be upheld. But, however, considering the evidence of P.W.3 regarding disability, Rs.20,000/- is awarded towards loss of future amenities. As regards loss of income during the period of treatment, rest and recovery, the evidence of P.W.2 can be considered. He stated that no salary was paid to the claimant from 25.03.1992 to

11.11.1995. However, there is inconsistency between the evidence of P.W.1 and P.W.2 with regard to no payment of salary during the said period. P.W.1 states that he was paid full salary from 25.03.1992 to February 1994 and subsequently from March 1994 to 12.11.1995 he was not paid any amount as he was availing medical leave. He further stated that Rs.980/- was deducted in view of the excess payment during the period from 25.03.1992 to February 1994. However, even if the claimant was paid full salary for the leave period, he would be entitled for the same as he could have availed the said leave period for his own necessities, had he not sustained injuries in the accident. Hence, the whole of the salary for the period under treatment, rest and recovery needs to be paid. Considering the evidence of P.W.2 that the total salary for the period starting from 25.03.1992 till 12.11.1995 is Rs.1,68,100/-, the same is awarded towards loss of income during the period of treatment, rest and recovery. The total award then comes to Rs.2,35,100/- out of which Rs.77,246/- needs to be deducted, which is awarded towards loss of salary and pain and suffering; then the award comes to Rs.1,57,854/-, which is rounded off to Rs.1,58,000/- with proportionate costs. 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.

In the result, the civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed.

T. RAJANI, J

November 9, 2017
DSK