

THE HON'BLE SMT. JUSTICE T.RAJANI

M.A.C.M.A.No. 858 OF 2008

JUDGMENT:

Assailing the order and decree dated 12-11-2007 in M.V.O.P.No. 143 of 2004 on the file of the learned Chairman, Accidents Claims Tribunal – cum – I Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the Tribunal), the claimant therein preferred the present appeal on the grounds that the Tribunal did not take into consideration the disability certificate, which is marked as Ex.A2, on the ground that it is only an attested copy and that no doctor was examined from the medical board to prove the same and that the Tribunal grossly erred in awarding a meager amount under the head medical expenditure in spite of there being medical bills in the form of Ex.A1.

2. At the hearing, learned counsel for the appellant submits that he filed M.A.C.M.A.M.P.No. 630 of 2017 along with the original disability certificate and the same can be admitted as evidence. But however an attested copy of the same is marked before the Tribunal and hence the same can be looked into thereby not necessitating the original to be brought on record.

3. The approach of the Tribunal in not appreciating the contents of Ex.A2 on the ground that it is an attested copy is not appreciable. Though the doctor, who issued the disability certificate, is not examined, P.W.3 was nevertheless examined before the Tribunal and he is a doctor who treated the claimant and can be considered as more competent to speak about the disability. He has, in unequivocal terms, spoken about the disability of the petitioner. Though he did not specify the percentage of the disability, from his evidence, it can be understood that the claimant had left spastic hemiparasis. As a consequence of

the said disability, she would be able to walk but there would be a little limp in the left leg. Her left hand is also markedly weak and goes into contracture and she would not be in a position to use the left hand for holding a glass or attending to nature calls or any other physical activities. The cross-examination of P.W.3 does not discredit his evidence regarding the nature of disability suffered by the claimant. Hence, this Court opines that the disability of the claimant stands proved through the evidence of P.W.3. The Tribunal ought to have considered the evidence of P.W.3 and appreciated the fact of disability of the claimant. Though this Court does not have any guidance from the evidence of P.W.3 with regard to the extent of the disability, it can be understood that left hand of the claimant is rendered totally useless and that she also has a disability in her left leg by way of limping. Hence, without any doubt, the disability as mentioned in Ex.A2 i.e. 60% can be taken as the disability of the claimant.

4. The claimant is stated to be a student at the time of accident and hence her future income is notionally assessed at Rs.15,000/- per annum as specified under Schedule II of the Motor Vehicles Act, 1988. 60% of disability would result in loss of Rs.9,000/- per annum. The age of the claimant at the time of accident was 16 and therefore the relevant multiplier as per **Sarala Verma Vs. Delhi Transport Corporation¹** would be 15. Hence, Rs.9,000/- X 15 = Rs.1,35,000/- would be the loss of future income to the claimant.

5. Learned counsel for the appellant also contends that the calculation made by the Tribunal with regard to Ex.A1 bills is erroneous and in fact, the bills are to an extent of Rs.1,78,755/-. Since the respondents did not make their appearance, the said contention remains uncontroverted. Hence, considering that the Tribunal anyhow awarded amount under Ex.A1 bills and considering that

¹ (2009) 6 SCC 121

there is an error in calculation of amount under Ex.A1 bills, Rs.1,78,755/-, which includes Rs.38,755/- awarded by the Tribunal, is awarded under the head medical expenditure.

6. Ex.A3 is the certificate issued by one Dr. G.K.Kishore, who is running a physiotherapy center, according to which the claimant was undergoing physiotherapy in his clinic twice a day by paying Rs.75/- per each sitting and he also certified that the claimant had to undergo physiotherapy for another six months. The date of accident is 17-06-2002. The certificate was issued on 12-05-2003 and according to Ex.A3, the claimant would require physiotherapy till 12-11-2003. Hence, one year five months is the total period of physiotherapy *i.e.* for about 510 days. Then, the expenses incurred by the claimant for physiotherapy would come to Rs.76,500/-. This Court opines that the disbelief expressed by the Tribunal with regard to the expenditure @ Rs.150/- per day cannot be sustained as Rs.75/- per sitting cannot be considered as being on high side. Hence, Rs.76,500/- - Rs.40,000/-, which was awarded by the Tribunal towards expenses for physiotherapy, = Rs.36,500/- is further awarded under the said head.

7. Hence, the award of the Tribunal stands enhanced by Rs.3,11,500/- making the total award as Rs.4,90,255/-. The appeal is accordingly partly allowed with proportionate costs. The 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 of the Tribunal.

8. Pending miscellaneous petitions, if any, in this appeal shall stand closed in consequence.

T.RAJANI, J.

Date: 13-04-2017/JSK

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DATED 13TH APRIL, 2017

JSK