

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.383 of 2009

JUDGMENT:

1. The National Insurance Company Limited aggrieved by the award and decree dated 19.2.2004 in O.P.No.2008 of 2000 on the file of the Chief Judge, City Civil Court, Hyderabad, preferred this appeal on the ground that no doctor was examined to prove the loss of earning capacity and that the Tribunal erred in considering the disability at 20% as loss of future earnings and also awarding interest at 12% p.a., which is on higher side. It is further contended that even in the absence of oral and documentary evidence, the Tribunal awarded compensation for the loss of earnings and granted Rs.20,000/- towards pain and suffering, which is more than the settled principles.

2. The 1st respondent is the claimant. The claim of the 1st respondent is that on 23.5.2000 while he was proceeding on his Luna Motor cycle bearing No.AEY 4232 from Somajiguda towards Rajbhavan after attending night duty, one Ambassador car bearing No.AHU 8988 came from behind in a rash and negligent manner and hit the motor cycle. In the said accident, he sustained grievous injuries and he got the treatment in Yashoda Hospital.

3. The appellant is not disputing the finding of the Tribunal on the rash and negligent driving of the driver of the Ambassador Car bearing No.AHU 8988 or its involvement in the accident. The appellant is only disputing the quantum of compensation and interest. Further, the contention of the appellant is that no doctor was examined to assess the loss of earnings.

4. There is the evidence of P.W.1, which is supported by salary certificate-Ex.A6. The consistent evidence of P.W.1 supported by Ex.A6 goes to suggest that P.W.1 is working as an Assistant Security Officer and he was drawing monthly salary of Rs.4,050/-. In the evidence of P.W.1, he specifically stated that in the accident, he sustained fracture and took treatment in Yashoda Hospital and thereafter, he was shifted to CDR hospital at Hyderguda and it is evident from Ex.A3-medical certificate, A4-medical bill issued by CDR hospital and Ex.A5-discharge summary issued by CDR hospitals.

5. The evidence of P.W.2 supported by Ex.A3 establishes that the claimant sustained Left hand in POP communicating fracture involving distal 1/3rd of humerus, evidence of cortical break in the posterter lateral aspect of left IIIrd RID, and the injury is grievous in nature. The Doctor-Y. Krishna, who treated P.W.1 and issued Ex.A7 certificate, certified that P.W.1 sustained disability of 30%, and issued Ex.A7-disability certificate on 22.4.2002. P.W.2 is the proper person to speak about the disability. In view of the injury mentioned in Exs.A3 and A5, the movements of left elbow of P.W.1 are restricted. Again P.W.2 examined P.W.1 on 16.9.2003 and 17.9.2003 and took X-ray, which revealed that at that time, P.W.1 is having deformity at the elbow on left side, and movements of left elbow are still restricted.

6. The Tribunal having considered Exs.A3 to A5 and A7 assessed the disability at 20%. It also considered Ex.A10-medical bills for Rs.6,451.50 ps., and Ex.A4 medical bill issued by CDR hospital, and awarded appropriate amounts, under the heads of loss of earnings, and pain and suffering, which are on lower side and just compensation. There is no error or irregularity in such findings warranting interference.

7. With regard to the rate of interest, it is the contention of the learned Counsel for the appellant that while awarding interest at the rate of 12% p.a., no doubt, the Court has to take into consideration the rate of interest which is generally charged by the banks at the time of award. The award was passed on 19.2.2004, during that period the rate of interest normally is at 8% or 9% p.a. Having considered the plea of the appellant, the rate of interest awarded by the Tribunal is modified and reduced to 9% p.a., from 12% p.a.

8. In the result, the MACMA is allowed in part and the award passed by the Tribunal in O.P.No.2008 of 2000 is modified and the rate of interest is reduced to 9% p.a., from 12 % p.a. The remaining award of the Tribunal is confirmed. Pending miscellaneous petitions, if any, shall stand closed.

9. The appellant is directed to deposit the compensation amount after adjusting the amount, if any already deposited/paid, within a period of one month from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same. The advocate fee is fixed at Rs.2,000/-.

JUSTICE N. BALAYOGI

Date: 23rd October, 2017
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