

THE HON' BLE MRS.JUSTICE T.RAJANI

MACMA NO.1065 of 2008

ORDER :

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of IV Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.713 of 2001, dated 07.08.2002, on the ground that the Court below did not award any compensation towards the permanent disability sustained by the petitioner though he filed the disability certificate and the compensation granted towards loss of income during the period of treatment is also less.

2. Heard both sides.

3. Learned counsel for the appellant contends that PW2, who is the doctor, spoke about the disability sustained by the petitioner and stated that there is restriction of movement of left shoulder. He considered it as a permanent disability to the extent of 20%. The Court below, however, did not believe the evidence of PW2, considering the fact that claimant did not undergo X-Ray which was suggested to be undergone by him and that he underwent X-Ray outside, which revealed fracture.

4. The Court below did not find any reason to believe the evidence of PW2 that there was disability, as there was no mal union of fracture. But, however, though there is no mal-union or non-union, the evidence of PW2, who is an Orthopedic Surgeon, need not be brushed aside. Though his assessment of permanent disability may

not be accurate, the fact that there was restriction of left shoulder movement need not be ignored or disbelieved.

5. The Court below has considered Rs.3000/- per month as monthly income of the claimant, which can be considered as appropriate, when there comes no evidence with regard to the income of the claimant.

6. Hence, considering the avocation of the petitioner, which is driving, 10% can be taken as the disability affecting his avocation, which would result in loss of Rs.300/- per month and Rs.3,600/- per annum. Age of the petitioner is of 30 years. Hence, multiplier relevant for his age as per *Sarla Verma Vs. Delhi Transport Corporation*¹ is '17'.

7. Hence, 3,600/- x 17 comes to Rs.61,200/-. The said amount is awarded towards loss of future income of the petitioner. The judgment of the lower Court shows that adequate amounts were awarded under the other heads, including the loss of income during the period of treatment, rest and recovery.

8. Hence, to the extent indicated above, the judgment of the lower Court is modified. Whereas, the rest of the judgment is left un-interfered with by this Court. This order 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.

¹ 2009 ACJ 1298

9. Accordingly, the MACMA is allowed in part with proportionate costs.

10. Miscellaneous petitions, if any pending, shall stand closed.

24.10.2017
vhb

T. RAJANI, J

