

SMT JUSTICE T. RAJANI

MACMA.No.75 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, not being satisfied with the award of the XIII Additional Chief Judge, City Civil Court, Hyderabad in OP.No.107 of 2006 dated 16.11.2007 on the grounds that the Court below did not award adequate compensation, as against the claim of Rs.3,00,000/- it awarded only Rs.72,000/- and that the Court below did not believe the evidence of P.W.2 with regard to the disability. The Court below ignored the fact that the surgery and nailing was done to the fracture of the thigh. P.W.2 spoke about the deformity and limping, which was not taken into consideration by the Court below.

2. Heard both the counsel.

3. A perusal of the judgment of the Court below shows that it declined to award adequate compensation towards the disability of the claimant as it considered that P.W.2, though spoke about the disability, did not issue any disability certificate. But in my considered opinion mere absence of the disability certificate shall not defeat a genuine claim, if it is otherwise found true. The expertise of P.W.2 in assessing the disability cannot be doubted as he is an Assistant Professor in Osmania General Hospital. He is no other than the doctor, who operated on the claimant and he would be the best person to assess the disability. His evidence shows that the disability of the claimant was assessed on 24.10.2007 when he went to him for review. The nature of disability is stated to be in the form of restriction of hip

joint movement and fixed flexion deformity of the hip. He also spoke about the restriction of the rotation of movements of right forearm and limping of right leg. With regard to the disability the claimant is stated to be a driver and the disability spoken to by P.W.2 would have absolute affect on his avocation, hence, there need not be any reason to disbelieve the evidence of P.W.2 with respect to 20% of the disability, which would affect the avocation of the claimant, if not more.

4. The income of the claimant was taken as Rs.3,000/- per month and 20% of the disability would result in loss of Rs.600/- per month and Rs.7,200/- annually. The claimant is stated to be 23 years and the multiplier relevant to his age is 18 as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹. Hence, Rs.7,200/- x 18 = 1,29,600/- is awarded under the head loss of income to the claimant due to 20% disability sustained due to the injuries caused in the accident. The amount is substituted in the place of Rs.12,000/- which was awarded towards deformity, thereby, the total award comes to Rs.1,29,600/- (substituted for Rs.10,000/-) + Rs.30,000/- (injuries awarded by the Court below) + Rs.15,000/- (pain and suffering by court below) + Rs.12,000/- (recovery period awarded by Court below) + Rs.2,000 (medical expenses awarded by Court below) + Rs.2,000/- (extra-nourishment awarded by Court below) + Rs.1,000/- (transport expenses awarded by Court below) = Rs.1,91,600/- rounded off to Rs.1,92,000/-. This award shall relate back to the date of decree and the compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

¹ (2009) 6 SCC 121

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

September 14, 2017
DSK

T. RAJANI, J

