

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA.No.783 OF 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the tribunal below, assailing the order of the VIII Additional District Judge, Nizamabad in OP.No.1439 of 2002 dated 27.09.2007, on the ground that the tribunal wrongly came to a conclusion and dismissed the OP though the appellant sustained grievous injury to his leg and his left leg was amputated.

2. At the hearing, counsel for the respondent-insurance company opposed the contentions of the appellant that Ex.A3 and the other documents on record are totally brushed aside by the tribunal saying that the evidence of PW.2 is not believed by it for the reason that he did not produce the case sheet.

3. A perusal of the order of the tribunal shows that the tribunal came to an assumption that no case sheet was maintained by PW.2 from the fact that he did not bring the case sheet to the tribunal and thereby disbelieved his evidence, which, in the considered opinion of this Court is far from just decision making, more particularly, in a case of a beneficial legislation. The wound certificate issued by PW.2 is marked as Ex.A3, which shows amputation and the same gains strength from the disability certificate, Ex.A7, which contains the photograph of the appellant showing amputation of left leg at knee. The tribunal also strongly disbelieved the evidence of PW.3 on the premise that PW.3 examined the claimant on 15.09.2006 while the

accident took place on 28.09.2002. The disability of a person would be amenable for assessment any time after he sustains it. Simply because there was delay in getting the disability assessed, the disability cannot be disbelieved, more so, as already observed, when the photograph of the appellant shows the amputation. It is a case of *res ipsa loquitor* where the thing speaks for itself.

4. Having accepted the amputation of the appellant, it would be just to award compensation for which he is entitled to. The evidence of PW.2 shows that the appellant was admitted in the hospital on 28.09.2002 and discharged on 11.10.2002. The said period of treatment can be taken as the basis for awarding compensation under certain heads. Considering the amputation of the left lower limb, Rs.20,000/- can be awarded towards pain and suffering. The medical bill, Ex.A4, is to an extent of Rs.24,695/-. PW.2 testified to the issuance of the said bill and this Court also opines that in all probability the appellant might have incurred the said expenditure. Hence, the same is awarded under the head 'medical expenditure'.

5. Apart from the above, considering that the appellant had to take treatment as inpatient from 28.09.2002 to 11.10.2002, Rs.10,000/- is awarded towards transportation and other incidental expenditure.

6. Except P.W.1, who is the appellant testifying about his income, there is no supporting evidence about the avocation and income of the appellant at Rs.12,000/- per month. Hence, his evidence is that he was working as Mestri and earning Rs.12,000/- per month but in the absence of any evidence supporting the same, Rs.3,000/- can be

taken as monthly income. The disability is stated to be 70%. It can be taken note of that by fixation of artificial leg, the appellant would be able to continue his avocation, but, not with the same efficiency as before the accident. Hence, though not 70%, 50% can be taken as the disability to assess the future loss of income of the appellant. The multiplier relevant for the age of the appellant is 15. Therefore, 50% of the disability would result in loss of Rs.1,500/- per month and Rs.18,000/- per annum. Hence, Rs.18,000/- x 15 = Rs.2,70,000/- would be the loss of future income of the appellant. Apart from that Rs.30,000/- can be awarded towards loss of future amenities of life. Hence, in all, the appellant is entitled to total compensation of Rs.2,70,000/- + Rs.30,000/- (future amenities) + Rs.20,000/- (pain and suffering) + Rs.24,695/- (medical expenditure) + Rs.10,000/- (transportation) = Rs.3,54,695/-, which is rounded off to Rs.3,54,700/-. The appellant is entitled to costs and interest at 7.5% per annum on the amount of Rs.3,54,700/- from the date of petition till the date of realization.

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

T. RAJANI, J

March 6, 2017
DSK