

SMT JUSTICE T. RAJANI

MACMA.No.1938 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, being aggrieved by the order of the III Additional District Judge, Kadapa in OP.No.499 of 2003 dated 02.11.2005.

2. The grounds urged are that the Court below did not consider 40% disability that was sustained by the claimant. The Court below in the light of Ex.A5 medical bills for Rs.15,272/- ought to have granted Rs.25,000/- towards medicines and extra-nourishment and Rs.20,000/- for pain and suffering but it granted only Rs.15,000/- and Rs.10,000/- respectively. The Court below ought to have granted Rs.1,00,000/- towards loss of earnings and physical disability.

3. Heard both the counsel.

4. The order of the Court below seems to be completely away from any rational approach. There is absolutely no reason stated against the awards made under different heads. The claim of the claimant for medicines and extra-nourishment is Rs.25,000/- and Rs.20,000/- for pain and suffering for the injuries viz. fracture of pelvis and fracture of tibia. P.W.2, the doctor, who treated the claimant, was examined and he clearly spoke about the disability that resulted from the malunion of the fracture of tibia and it was stated that there was exuberant callus; the nature of disability is also spoken to by P.W.2, that the claimant

was unable to squat, sit cross legged and stand. The disability assessed by him is 40% which is permanent and partial.

5. The Court below did not appreciate the evidence of P.W.2. While observing that Ex.A5 medical bills are to an extent of Rs.15,272/-, though the claimant claimed Rs.25,000/- towards medicines and extra-nourishment, the Court below awarded only Rs.15,000/- towards medicines and extra-nourishment and Rs.10,000/- towards pain and suffering. Rs.3,000/- was taken as the monthly earnings of the claimant but somehow the Court below arrived at a figure of Rs.30,000/- towards loss of earnings and partial disability. The observation that the evidence of P.W.2 and the disability certificate are not helpful to calculate the compensation using multiplier system is irrational when there is ample evidence before the Court below about the nature of disability. It appears that the Court below has shirked from its responsibility to make a scientific calculation.

6. The avocation of the claimant is stated to be farming, hence, the nature of the disability, stated by P.W.2, affects the avocation of the claimant and thereby the income. There is no reason to disbelieve the evidence of P.W.2. The disability, being to the leg of the claimant, to an extent of 40%, as stated by P.W.2, can be taken as affecting the avocation of the claimant. Thus, the loss of monthly income would be $\text{Rs.3,000/-} \times 40\% = \text{Rs.1,200/-}$ and loss of annual earnings would be $\text{Rs.1,200/-} \times 12 = \text{Rs.14,400/-}$. The age of the claimant is stated to be 40 years at the time of the accident and the multiplier relevant as per

SARLA VERMA v. DELHI TRANSPORT CORPORATION¹ is 15; the loss of future income of the claimant on account of disability at 40% would come to Rs.14,400 x 15 = Rs.2,16,000/-. However, since the claimant made a claim of Rs.2,00,000/-, the compensation amount is restricted to Rs.2,00,000/- only with proportionate costs. This 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 by the Court below.

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.

July 7, 2017
DSK



T. RAJANI, J

¹ (2009) 6 SCC 121