SMT. JUSTICE T. RAJANI

M.A.C.M.A.No.230 of 2008

JUDGMENT:

This appeal is preferred by the claimant in O.P.No.273 of 2003 assailing the award dated 22.01.2007 passed by the Motor Accidents Claims Tribunal at Nizamabad (for short 'the Tribunal'), on the grounds that the Tribunal did not appreciate the facts, other injuries, the expenses incurred for treatment, did not award compensation under all heads, did not consider the future hike of income and the claim is rejected on technical grounds.

2. Heard the counsel for the appellant. The counsel for the respondent has not appeared.

3. Learned counsel for the appellant wants to base his claim on a ruling of the Apex Court in **Syed Sadiq v. United India Insurance Co. Ltd.**[1] He points out that the Tribunal, in spite of the fact that right hand of the claimant was amputated above the elbow, granted only Rs.1 lakh towards loss of future income, which is very low. He relies on the relevant part of the above-said ruling, wherein the Apex Court had estimated the functional disability at 85%, affecting the income of the claimant therein, who is stated to be a vegetable vendor. The counsel draws a comparison between the avocation in the case dealt with by the Apex Court and this court and contends that the same needs to be adopted. But, in this case, Ex.A.7 – disability certificate

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[1] **(2014) 2 SCC 735**

shows 80% disability, while P.W.2, who is the Doctor who treated the claimant stated that disability is only 70%. But, however, the case being one of amputation, disability has to be assessed vis-à-vis the avocation of the appellant. The amputation in the case of the claimant in the above-said ruling is that of his leg, while, in this case, it is that of the hand of the appellant. The amputation of leg would disable a person, more than it does in the case of amputation of hand. Hence, considering the said difference, this court is inclined to take functional disability of the appellant at 50% for estimating the future income of the claimant. There is no proof with regard to income of the appellant in this case also, as was in the case dealt with by the Apex Court. But the Apex Court had taken Rs.6,500/- per month as the income of the claimant therein, as his age was 24 years. In this case, appellant is aged only 20 years; hence the said distinction also has to be drawn. Hence, the income of the appellant is taken as Rs.4,000/- per month. Going by the principle adopted by the Apex Court in the above-said ruling, 50% has to be taken as future hike of the income; then the income would come to Rs.6,000/-. 50% of the same would be Rs.3,000/- per month. The multiplier relevant as per the ruling in **Sarla Verma & Ors. v. Delhi Transport Corp.& Anr.**[2] is '18'. Hence, Rs.36,000/- x 18 would come to Rs.6,48,000/-, which will be the loss of future income of the claimant. The Tribunal also did not grant the amount contained in the medical bills, considering that no proof is made in that regard, by examining the Doctor who

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[2] **AIR 2009 SC 3104**

treated the appellant and who issued the said bill. But, however, considering that it is a case of amputation, this court is of the opinion that the appellant might have incurred the said expenditure in all probability; hence Rs.15,150/-, which is the medical expenditure allegedly incurred by the appellant is awarded under the head 'medical expenditure'. The Tribunal awarded Rs.25,000/- towards pain and suffering. The counsel, by relying on the above ruling, seeks to enhance the said amount to Rs.50,000/-, as was awarded in that case. But, going by the same distinction that the amputation is on the hand of the appellant in this case, Rs.30,000/- can be awarded towards loss of future amenities. Rs.30,000/- is awarded towards pain and suffering, as against Rs.25,000/- awarded by the Tribunal. The counsel also contends that the Tribunal did not award any amount towards loss of future marriage prospects of the appellant. Going by the above-said ruling, Rs.40,000/- is awarded towards loss of marriage prospects. Though the Apex Court awarded Rs.25,000/- towards cost of litigation, absolutely no material is placed before this court with regard to the same. The appellant would, however, be entitled for recovery of costs from the other side. Hence, no amount is awarded under the said count.

4. In all, an amount of Rs.7,63,100/- is awarded as compensation to the appellant, which is rounded off to Rs.7,63,000/-, as against the compensation awarded by the Tribunal at Rs.1,60,000/-, which is to be deducted out of the amount of Rs.7,63,100/-. The award 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 Tribunal. Proportionate costs are ordered.

5. In the result, the appeal is allowed in part to the extent indicated above.

Miscellaneous petitions if any pending in the appeal stand closed.

T. RAJANI, J

March 24, 2017
MRR