

SMT JUSTICE T. RAJANI

MACMA No.2723 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, assailing the judgment, dated 27.09.2006, of the Motor Vehicles Accidents Claims Tribunal-cum-XXI Additional Chief Judge-cum-VII Additional Metropolitan Sessions Judge, Nampally, Hyderabad, passed in MVOP.No.947 of 2004, on the grounds that the court below did not award adequate compensation and did not consider the 10% of disability as stated by PW2 and that it also erred in awarding meagre sum of Rs.3,000/- towards loss of earnings.

2. Heard the counsel for the appellant as well as the counsel for the respondents.

3. The petitioner is stated to have sustained several injuries in the motor accident and he was treated by PW2. Hence, the evidence of PW2 can be looked into, to see whether the compensation awarded by the court below under various heads is adequate or not. The evidence of PW2 shows that at the time of admission of the petitioner into hospital, there was deformity in left thigh and left leg and the left hip movements were painful. He was admitted as inpatient on 02.10.2003 in Emergency and Exploratory Laparotomy was done. Lacerated injury to loop of Midileum and Sigmoid colon, Resection and EEA of Midileum, Sigmoid colon, transverse colostomy was done on 07.10.2003, ORIF of upper/third Femur fracture left with D.C.S., IL nAIL left

tibia and external fixator pelvis was done. He was put on ventilator and on inotropic support for four days. Thereafter, sutures were removed and he was discharged with advise to use medicines to take care of colostomy and to come for review. He was again admitted in their hospital on 27.11.2003 with pain in abdomen, vomittings, non-passing of urine, post OP sigmoid perforation and fracture pelvis, sub-acute intestinal constriction, acute retention of urine, external fixator of pelvis was removed on 29.11.2003. He was advised to come after 15 days for colostomy closure. He was again admitted on 17.12.2003 for follow up of poly trauma and for colostomy closure and it was done. He was advised medicines and advised to undergo another surgery for removal of implants.

4. After having spoken to, as such, regarding all the injuries, he states that the disability assessed by him is 10%, which is permanent in nature. But, unfortunately, he does not specify as to the nature of disability. The evidence of PW2 would lead to an understanding that the follow up treatment was more for colostomy closure and fracture of pelvis. Petitioner is stated to be an agriculturist. Hence, unless there is specific evidence regarding the disability on the organ of the body, to which the disability is sustained, it is not possible to come to a conclusion that the disability would affect the avocation of the petitioner. Hence, however, vehement the contention of the petitioner's counsel may be with regard to the compensation that has to be awarded by considering the said disability, this Court is not in a position to differ with the inability expressed by the court below

for not having sufficient evidence on the nature of disability. But, however, the court below did not consider the disability at all and did not award any compensation or loss of amenities. The evidence of PW2 shows that the petitioner sustained permanent disability, which in respect of any organ, would cause loss of amenities to the claimant. Hence, Rs.20,000/- is awarded towards loss of amenities.

5. The judgment of the court below also shows that though it considered that so many injuries were sustained by the claimant and he underwent surgeries, it awarded only Rs.25,000/- for pain and suffering, which can be enhanced by another Rs.15,000/-. towards pain and suffering.

6. The evidence of PW2 is that the claimant has been going round the hospitals for several times. Hence, the loss of earnings can be taken for a period of at least three months. Hence, another Rs.6,000/- over and above Rs.3,000/-, which was awarded by the court below, is awarded towards loss of earnings.

7. The court below did not award any amount towards transportation expenditure. From the nature of injuries, it can be understood that the petitioner might have required special transportation while going to and fro from the hospital. Hence, Rs.15,000/- can be awarded towards special transportation and other incidental expenses. Hence, in all, Rs.56,000/- is the enhanced amount.

8. To the extent indicated above, the judgment of the lower court is modified. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

The appeal is, accordingly, partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

November 17, 2017
LMV

T. RAJANI, J

