

SMT JUSTICE T. RAJANI

MACMA.No.2615 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the XI Additional Chief Judge, Hyderabad in OP.No.1181 of 2003 dated 23.11.2005, on the grounds that the Court below did not award adequate compensation; it erred in granting only Rs.77,000/- as against the claim of Rs.1,00,000/- and the award under the other heads also is inadequate

2. Heard counsel for the appellant. Counsel for the respondent did not appear.

3. The claimant is stated to have sustained injuries in a motor accident, which occurred on 19.03.2003. He made claims under separate heads. The Court below awarded amounts under each of the heads.

3. The contentious issue raised by the counsel for the appellant is with regard to the amount granted towards loss of income caused by the disability of the claimant. He contends that the Court below having observed that even 20% of the disability would entitle the claimant for Rs.98,648/-, did not award the said amount considering that only Rs.39,000/- was claimed under the said head.

4. The law is well settled that just compensation has to be awarded and the Courts need not go by the claim made under each of the heads. The law is also well settled that even the total award can

exceed the claim amount. A decision of this Court in FATHIMA BEGUM v. SANGAMESH CHIDRI¹ is relied upon by the counsel for the appellant in support of the said settled principle.

5. The evidence of P.W.2, who is a Member of the Medical Board, would show that the claimant sustained 40% disability and there is no reason to disbelieve his evidence. There is amputation of 3rd and 4th toes of right foot and restriction of movement of right ankle. Hence, in the light of the nature of the disability, the percentage of disability stated by P.W.2 can be accepted.

6. The counsel for the appellant relied on a decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017] in support of his contention that there should be an addition of 30% to the salary of the claimant, who is a permanent job holder. The Supreme Court rules as such in the above decision. Hence, the salary of Rs.5,605/- is enhanced to Rs.7,286/- per month by an addition of 30%. 40% of the disability would result in loss of Rs.2,914/- per month and Rs.34,972/- per annum. The multiplier relevant for the age of the claimant, being 48 years, is '13' as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION². Hence, the loss of future income would come to Rs.34,972/- x 13 = Rs.4,54,636/- and the same is substituted for Rs.39,000/-, which was awarded towards permanent and partial disability to the claimant. The rest of the award made

¹ 2012 (5) ALD 125

² (2009) 6 SCC 121

under different heads shall stand uninterfered with. 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.

In the result, the civil miscellaneous appeal is allowed in part with proportionate costs. The appellant shall pay the differential court fee. As a sequel, the miscellaneous applications, if any, shall stand closed.

November 9, 2017
DSK

T. RAJANI, J

