

THE HON'BLE SMT JUSTICE T.RAJANI

M.A.C.M.A.No.2273 of 2006

JUDGMENT:

This appeal is preferred by the appellant, who is the 3rd respondent – Insurance Company in the Court below, assailing the award of the XII Additional Chief Judge, City Civil Court, Hyderabad, dated 14.09.2005 in O.P.No.1393 of 2002, on the ground that the Court below in spite of there being no evidence on the aspect of disability and in spite of the Doctor, who was examined as PW.2, stating that 10% is the disability at that time, awarded compensation by considering the disability as 100%.

2. In the Court below the claimant examined himself as PW.1 and got examined PW.2, Doctor, who treated him, and got marked Exs.A.1 to A.7 on his behalf. The evidence of PW.2 is to the effect that the petitioner sustained the fracture injury and requires a rest of 2½ months; he would not be able to bear weight and walk properly till 75 days. So, that part of the evidence of PW.2 would state that there will not be any future disability. He further stated that he has operated the petitioner and there is a rod inserted inside the leg. He states that there is no shortening of leg, but there is loss of flexion at the left hip and left knee. He also stated that he cannot walk, run and play during that time. He states that the disability to run and play is due to the limp. When there is no shortening of leg, this Court does not see any probability of the petitioner developing a limp which would result in any disability. The evidence of PW.2 is also to the effect of the strength of the leg being normal. PW.2 was not in a position to predict whether the limp can be cured or continued or worsened. According to him, rod inserted has to be removed later. He

ultimately stated that there was 10% disability as on that day. Hence, evidence of PW.2 is as vague as vagueness can be and nothing can be gathered from his evidence with regard to the disability. Even the 10% disability stated by him is only as on that day. He was not able to say whether the said disability would continue or would be permanent. In such circumstances, the approach of the Court below in awarding compensation taking disability as 100% is absolutely erroneous. Since the learned counsel for the respondents did not appear, no counter argument comes forth.

3. In the result, the appeal is partly allowed by setting aside the award of the Court below to the extent of awarding Rs.2,25,000/- towards permanent disability. Remaining extent of the award passed by the Court below stands good.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Date:09.06.2017
INL

JUSTICE T.RAJANI