

SMT JUSTICE T. RAJANI

MA CMA No.2701 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, assailing the judgment, dated 22.03.2011 of the XIII Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad, in OP No.1197 of 2008, on the ground that the court below did not award compensation under each of the heads by making proper assessment and it awarded only Rs.55,000/- as a lumpsum.

2. The claimant allegedly sustained injuries in the motor accident and he was treated by PW2-Doctor. The evidence of PW2 becomes important to assess the compensation and the disability. According to PW2, there is a shortening of leg up to 1½ inch and there is mild restriction of movements at the right hip. A surgery was conducted for fractures and the fractures were fixed with implants. PW3 is the doctor, who only issued the disability certificate. According to him also, the disability was to the extent of 45% and there was a shortening of 1½ inch of leg. He issued Ex.A7 stating that there are restrictions at the hip joint. Hence, from the evidence of PWs.2 and 3 it can be understood that the disability sustained by the claimant is 45%. There need not be any reason to disbelieve the said evidence.

3. The claimant is stated to be a mason. The counsel for the respondent, however, assails the said argument on the ground that the claimant is described as an agriculturist in the charge

sheet and also the complaint, which is given by none other than the brother of the claimant. But however, even if the claimant is considered as an agriculturist the income of Rs.5,000/- per month, as stated by him, can be considered as moderate and there need not be any reason not to accept the same. Hence, Rs.5,000/- can be taken as his monthly income.

4. The counsel relies on the ruling of the apex court in *National Insurance Company Ltd., vs. Pranay Sethi* in Special Leave Petition (Civil) No.25590 of 2014, to contend that future hike of income should be 40% as he is aged 30 years and self employed. When 40% is taken, the standardised income of the claimant comes to Rs.7,000/-. With the said income as the basis, if the disability of 45% is calculated, the loss of income would come to Rs.3150/- per month and Rs.37,800/- per annum. The multiplier relevant for the age of the claimant as per the decision in *Sarla Verma v. Delhi Transport Corporation*¹ is '17'. The loss of future income to the claimant would come to Rs.6,42,600/-.

5. The counsel also contends that no amount was awarded towards pain and suffering.

6. Taking into account the fact that the claimant sustained two fractures, though on the same leg, an amount of Rs.25,000/- is awarded towards pain and suffering. Considering the disability being 45%, Rs.10,000/- is awarded towards loss of future amenities of life. Since no transportation expenditure was

¹ (2009) 6 SCC 121

awarded, Rs.10,000/- is awarded under the said head considering that the claimant, who sustained fracture injuries on his leg, might have required special transportation while going to and from the hospital.

7. The court below did not award any amount for loss of income during the period of treatment. The nature of injuries would suggest that the claimant would not be able to attend the work for at least three months. At the time of the accident, the claimant was believed to be earning only Rs.5,000/- per month. Hence, Rs.15,000/- is awarded towards loss of income during the period of treatment, rest and recovery. Further Rs.5,000/-, awarded by the court below towards medical expenses, also can be retained.

8. In all, the claimant is entitled to Rs.7,07,600/- { Rs.6,42,600/- (loss of future income) + Rs.25,000/- (pain and suffering) + Rs.10,000/- (loss of future amenities of life) + Rs.10,000/- (transportation expenditure) + Rs.15,000/- (loss of income during the period of treatment, rest and recovery) + Rs.5,000/- (medical expenses)}, rounded off to Rs.7,08,000/-. Though the compensation granted exceeds the claimed amount, now the law is well settled by virtue of the decision of the Supreme Court in *Rajesh v. Rajbir Singh*², wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in *Adam Indur Mutemma v.*

² (2013) 9 SCC 54

*Rathod Peddita*³ held that the compensation amount can exceed the claimed amount, subject to payment of court-fee.

9. Hence, the award of the Court below is modified to the extent indicated above. The claimant shall pay the differential court-fee. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

Accordingly, the MACMA is allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 22, 2017
LMV



T. RAJANI, J

³ 2015(4) ALD 585 (LB)