

**SMT. JUSTICE T.RAJANI**

**MACMA. No.433 of 2008**

**JUDGMENT:**

This appeal is preferred by the appellant, who is the claimant before the Court below, not being satisfied with the award of the XVIII Additional Chief Judge, Hyderabad passed in O.P. No.2536 of 2003 on 24.07.2007, as according to him, the Court below did not award adequate amount and it did not award compensation for the loss of kidney and spleen and the Court below also did not grant the medical expenditure that was incurred by the claimant and granted only Rs.40,000/- towards medical expenses/bills, which is not adequate and the other amounts awarded by the Court below are also not adequate.

Heard the learned counsel on either side and perused the material on record.

Brief facts of the case, to the extent necessary, are that the claimant met with an accident on 01.02.2003 and sustained injuries, which are spoken to by P.W.2, Doctor who treated him, and he testified about the medical certificates, which are marked as Ex.A-3 to A-9 issued by the Kamineni Hospital. P.W.2 spoke about the injuries and stated that the Kidney and spleen of the claimant had to be removed as they were damaged. He also spoke about the fracture of left side 8<sup>th</sup> and 9<sup>th</sup> ribs. The Court below did not take into consideration the fractures and removal of spleen and kidney and did not award any amount and took into consideration only the loss of teeth. There cannot be any reason for not considering the fractures of the ribs and the loss of kidney and spleen, which are results of the accident. The medical record amply proves that the above injuries are consequent to the accident. Hence, considering the nature of the injuries Rs.20,000/- can be awarded towards pain and suffering caused by the fracture to the 8<sup>th</sup> and 9<sup>th</sup> ribs. Rs.30,000/- can be awarded towards pain and suffering caused by loss

of spleen and kidney. Regarding the medical expenditure incurred by the claimant he filed Ex.A-6, medical bill to the extent of Rs.1,06,030/- and Ex.A-7, which is bill for Rs.10,790/-, which comes to a total of Rs.1,16,820/-. But, the Court below by considering the evidence of the claimant that he was reimbursed Rs.60,000/-, granted only Rs.40,000/-.

The learned counsel for the appellant would contend that along with Ex.A-10, which is the claim made to the Government for Rs.1,35,751/-, unfortunately, the supporting documents filed in the said claim are not filed before the Court as they are submitted along with Ex.A-10, to the Government. Hence, the documents for medical expenditure evidenced by the Exs.A-6 and A-7 can be considered. After deducting Rs.60,000/- and Rs.40,000/-, which were reimbursed by the Government and awarded by the Court below, respectively, the amount remaining to be awarded towards medical expenditure is Rs.16,820/-. Therefore, the same is awarded towards the remaining medical expenditure.

The Court below also did not award any amount towards loss of income during the period of treatment and recovery. Income of the claimant is stated to be Rs.7,581/- and the same is evidenced by Ex.A-13, salary certificate. The nature of the injuries would suggest that he might have required two months for treatment and recovery. The salary certificate was not assailed or discredited in the cross examination done by the respondents. The claimant is stated to be a Government employee hence, the salary evidenced by Ex.A-13 can be held to be appropriate. Hence, Rs.15,162/-, which is the salary for two months, is awarded under the head loss of income during the period of treatment and rest and recovery.

As regards the disability sustained by the claimant, the evidence of P.W.2 is that because of the loss of spleen, the claimant would be prone to catch infections and he has to take more precautions against infections and the resistance power of the body would get reduced. He also stated that the claimant would have died if he had not undergone surgery immediately. But, he does not speak about the extent of disability. Hence, no guidance can be taken from the ruling of the Hon'ble High Court of Madras rendered in the case of **ROYAL SUNDARAM ALLIANZ GENERAL INSURANCE CO LTD Vs. RAMASAMY AND ORS**<sup>1</sup> wherein the Tribunal considered the 50% of the disability stated by the doctor. Hence, considering that there is no guidance with regard to the disability sustained by the claimant, I am inclined to grant a lumpsum of Rs.1,00,000/- towards loss of future income consequent to the loss of kidney and spleen. For the same reasons, Rs.30,000/- is also awarded under the head of loss of future amenities of life. Hence, in all, an amount of Rs.2,11,982/- is awarded in addition to the award of Rs.1,00,000/- made by the Court below. The total award amount which comes to Rs.3,11,982/- (2,11,982 + 1,00,000/-) is rounded off to Rs.3,12,000/-.

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 Court below.

In the result, the appeal is allowed in part with proportionate costs. Consequently, miscellaneous petitions, if any, stands closed.

**JUSTICE T.RAJANI**

**Date: 11.08.2017**  
LSK

<sup>1</sup> 2013 Law Suit (Mad)131