

SMT JUSTICE T. RAJANI

MACMA No.1373 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the XIII Additional Chief Judge, City Civil Court, (Fast Track Court), Hyderabad, in MVOP.No.1285 of 2006 dated 04.01.2008 on the grounds that the compensation awarded by the Court below is not adequate and that the court below did not accept the evidence of P.W.2; he categorically stated that there was 40% disability and that the disability resulted in difficulty in sitting cross legged; the court below also erred in appreciating Exs.A9 and A10, which are issued by Yashoda Hospital.

2. Heard both sides.

3. The counsel for the appellant contends that the Court below awarded only a lumpsum of Rs.10,000/- towards partial disability which needs to be interfered with. The evidence of P.W.2, who is the doctor, was very much before the Court below, but it ignored the said evidence considering that the doctor did not issue any disability certificate. In my considered opinion, when the expert himself is before the Court and when he speaks about the disability, more so, when he is the Doctor, who treated the petitioner, there is absolutely no reason to call for the assistance of a disability certificate. Even if a disability certificate is issued by P.W.2, it would be on the same lines as stated by him. Hence, even without the disability certificate, the disability stated by P.W.2 can be taken into consideration for understating its affect on the avocation of the petitioner.

4. The claimant is stated to be a vegetable vendor. The disability resulted in difficulty in sitting cross legged. The nature of the work that would be done by the claimant is not clearly explained and whether it involved sitting cross legged or not is not proved. But it can be assumed that some amount of such sitting would be involved in the avocation of the claimant. Hence, in the least of 20% can be taken as the disability affecting the income of the petitioner. The income of the claimant was taken as Rs.3,000/- per month, which is considered to be adequate, and 20% of the disability would result in loss of Rs.600/-per month and Rs.7,200/- per annum. The age of the petitioner is stated to be 32 years and the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹ is '16'. Hence, the amount of compensation under the head loss of future income works out to Rs.7,200/- X 16 = Rs.1,15,200/-.

5. The Court below also awarded a meagre amount of Rs.1,000/- towards transportation. But in my opinion, the fractures being on the leg of the claimant, it would have required a special transportation for going to and from the hospital. Hence, Rs.10,000/- is awarded towards transportation expenditure.

6. The counsel for the appellant submits that the Court below failed to take into consideration the expenditure required for the future surgery of the claimant as evidenced by Exs.A9 and A10. The approach of the Court below in declining to grant any amount under Exs.A9 and A10 cannot be found fault, in the absence of any

¹ (2009) 6 SCC 121

supporting evidence for the probability of the claimant incurring the said expenditure. The Court below cannot be expected to do better than what it has been done, for the same reason. This Court also cannot accept the amounts under Exs.A9 and A10. It would have been a different case, if P.W.2, who treated the claimant, had at least spoken about the requirement of future surgery for the claimant but he failed to do so thereby giving no other option except to disbelieve Exs.A9 and A10. However, considering the nature of disability Rs.15,000/- is awarded towards loss of future amenities.

7. Hence, in all, the claimant is entitled to enhanced compensation of Rs.1,15,200/- (loss of future income) + Rs.10,000/- (transportation) + Rs.15,000/- (future amenities) = Rs.1,40,200/- with proportionate costs. To the extent indicated above, the judgment of the Court stands modified. The rest of the award shall remain unaltered. 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 civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed.

T. RAJANI, J

October 13, 2017
LMV