

SMT JUSTICE T. RAJANI

M.A.C.M.A. No.67 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the XXII Additional Chief Judge, Hyderabad in O.P. No.392 of 2006 dated 29.10.2007 on the ground that the compensation amount awarded by the Court below is inadequate, as the Court below did not believe the evidence of PW.2 in speaking about the disability of 40% sustained by the claimant and failed to grant future loss of earnings.

2. Heard both the counsel.

3. The evidence of the claimant shows that he sustained two fracture injuries i.e., one is shaft femur of right lower limb and another is fracture of both bones of right leg. Considering the same, the lower Court granted Rs.25,000/- towards pain and suffering, which can be considered as adequate. The medical bills under Ex.A5 are to an extent of Rs.9,769/-, but the Court below awarded Rs.3,000/- only as there was no proof. As the claimant took treatment for 40 days and the same is stated to be testified by PW.2, having no reason to disbelieve the medical expenses, the remaining amount of Rs.6,769/-, under Ex.A5, is awarded under the head of medical expenditure.

4. The expenditure awarded towards transportation is Rs.3,000/- and the same can be considered as adequate.

5. Regarding the earnings of the claimant, considering that the earnings would be only Rs.2,000/- per month, the Tribunal awarded Rs.4,000/- towards loss of earnings during the period of treatment. Taking 1 ½ month as the period of rest after discharge, the period of hospitalisation is 40 days, hence, the total period comes around three months. The income of the claimant taken as Rs.2,000/- per month can also be considered on lower side. As any able bodied person would be able to earn atleast Rs.3,000/- per month, the claimant being an agricultural coolie, can be considered as earning Rs.3,000/- per month in the least. Hence Rs.9,000/- should be the loss of income during the period of treatment, rest and recovery. After deducting Rs.4,000/- from Rs.9,000/-, the remaining Rs.5,000/- is awarded under the head 'loss of earnings'.

6. Regarding loss of future earnings, in spite of eliciting relevant answers from PW.2, the lower Court did not believe the evidence of PW.1 for the reason that PW.2 did not issue disability certificate and that he stated that the condition of the petitioner was satisfactory at the time of discharge and that the implants are still in the body of the claimant and that there is no medical record, to show that the examination of PW.1 after discharge, is

filed. Though there is no disability certificate issued by PW.2, his evidence with regard to the disability need not be disbelieved, as he answered the questions put by the Court, saying that he examined the claimant on the previous day of his giving evidence in Court and found shortening of right lower limp 1 ½ inch. He also found limping due to the said shortening and also found difficulty in squatting. He also categorically stated that even after removal of implants, the disability would not be reduced. Hence, the disability, as stated, needs to be taken into consideration. The said disability would definitely hamper the avocation of the claimant, as he is stated to be an agricultural coolie, which involves walking and squatting. 40% of disability would result in loss of Rs.1200/- per month and Rs.14,400/- per annum. The age of the claimant is stated to be 27 years and the multiplier suitable for his age, as per the decision in *Sarla Verma & Others v. Delhi Transport Corporation and another*¹, is '18'. Then Rs.2,59,200/- (Rs.14,400/- X 18) would be the loss of future income of the petitioner. Hence, Rs.2,70,969/- is awarded in addition to the amount awarded by the lower Court. But the claim of the claimant is only for Rs.3,00,000/-, the compensation amount is restricted to Rs.3,00,000/-. The compensation shall carry interest at the rate specified and from the time indicated in the award by the Court below.

¹ (2009) 6 Supreme Court Cases 121

Accordingly, the appeal is allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

Date:05.10.2017
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