

SMT. JUSTICE T. RAJANI

M.A.C.M.A. No. 165 OF 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant in the lower Court, questioning the award passed by the III Additional District Judge (Fast Track Court), Nizamabad, in O.P.No.1989 of 2003, dated 23.07.2007, on the grounds that the lower Court erred in not considering the fact that the appellant is earning Rs.6,000/- per month and that the lower Court failed to see that the appellant sustained grievous injuries and erred in not observing the disability as stated by PW.2.

Counsel for the appellant appeared and argued the case, but none appeared for the respondents.

A perusal of the wound certificate, Ex.A3, shows that there is a fracture of both bones of right leg. The award of the lower Court shows that Rs.7,500/- was awarded for the fracture injury, which, in the considered opinion of this Court, can be enhanced to Rs.15,000/-. The lower Court, without any proof regarding the medical expenditure, awarded Rs.2,500/- on considering that though the appellant took treatment in a Government hospital is likely to incur the said expenditure towards the medicines, which will not be available in the Government hospital. The lower Court rightly disbelieved the evidence that the appellant was earning Rs.6,000/- per month by considering the age of the appellant,

which was only 13 years by the date of accident. But, however, the avocation of the appellant is shown as student apart from being vegetable vendor. This Court opines that the injury might have disabled the appellant for at least a period of 2 or 3 months from attending his school. Hence, Rs.3,000/- can be awarded towards loss of studies during the period of treatment, rest and recovery. The evidence of PW.2 shows that the appellant sustained disability to the extent of 20%. The lower Court did not give credit to the evidence of PW.2, considering that there is no disability certificate from the District Medical Board. But, PW.2 is the Doctor, who treated the appellant. Hence, he is more competent to assess the disability having been qualified to treat the appellant. Hence, this Court does not find any reason to disbelieve the evidence of PW.2 with regard to the disability sustained by the appellant. The disability stated is that the appellant is feeling difficulty in squatting and that there would be limping. There is no evidence with regard to the avocation that the appellant is likely to take up in future. Having accepted that the appellant is a student, this Court opines that he would probably take up a white coloured job in future and the disability stated by PW.2 may not have impact on his future avocation, but, however, it can definitely result in loss of future amenities. Hence, Rs.20,000/- is awarded towards loss of future amenities.

To the extent indicated above, the award of the lower Court stands enhanced.

In the result, the appeal is partly allowed by enhancing the award amount by Rs.23,000/-.

This award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate and from the time as awarded by the Court below.

Miscellaneous petitions, if any, shall stand closed. No costs.

Date: 03.03.2017
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T. RAJANI, J

