SMT JUSTICE T. RAJANI

MACMA No.1207 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the I Additional District and Sessions Judge, Ranga Reddy District on the grounds that the Court below did not award adequate compensation and did not consider the disability, which was stated by the doctor, in a proper perspective.

2. Heard both sides.

3. The counsel for the appellant takes this Court through the evidence of P.W.4, who is the doctor, who treated the claimant, wherein it was not stated that the disability can be reduced after the surgery.

4. The Court below noted that in the disability certificate, the percentage of disability initially mentioned as 70% was corrected to 80%. But in the considered opinion of this Court, the said factor need not weigh with the Court below in arriving at the percentage of disability, as the correction was done by the concerned person and the same was certified by him and simply because there was an error in the initial figure, which was corrected subsequently, it need not be suspected. The evidence of P.W.4 is very categorical to the extent that the disability would not be reduced even if the surgery is conducted and he states that the surgery required is only for removal of implants, which would not have any effect on the disability. Hence, there need

not be any reason to disbelieve the evidence of P.W.4, to take the disability as 80%.

5. The income of the claimant, as taken by the Court below, is also disputed by the counsel for the appellant. He contends that as per the decision of the Supreme Court in MINU ROUT v. SATYA PRADYUMNA MOHAPATRA[1] the income has to be at least Rs.6,000/- The Supreme Court by considering that the post of a driver is a skilled job and took Rs.6,000/- per month as the income. The claimant, in this case, is a machine operator, hence, he can be considered as a person, who would be earning Rs.6,000/- per month

6. The counsel for the appellants also relies on a latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] to contend that the future hike in the income is also to be considered and the deceased, being 33 years, the future hike has to be 40% as per the said decision.

7. Hence, taking the said future hike into consideration, the monthly income of the claimant comes to Rs.6,000/- + (Rs.6,000/- x 40% = Rs.2,400/-) = Rs.8,400/-. The loss of income on account of disability at 80% comes to Rs.8,400/- x 80% = Rs.6,720/- per month and the annual income comes to Rs.6,720/- x 12 = Rs.80,640/-. The Court below has taken the multiplier 17, which is not disputed. Hence, the loss of future income to the claimant comes to Rs.80,640/- x 17 = Rs.13,70,880/-.

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[1] 2013 ACJ 2544

8. The counsel for the appellant also contends that the amount awarded under the head pain and suffering, being only Rs.10,000/-, is not adequate. The injury, being a fracture injury on the leg, which resulted in treatment, may require another Rs.15,000/- towards pain and suffering.

9. In all, the claimant would be entitled to total compensation of Rs.13,70,880 + Rs.15,000/- = Rs.13,85,880/- with proportionate costs. Hence, the award of the Court below is modified as indicated above with proportionate costs. The rest of the award shall remain uninterfered with. 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.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 11, 2017
DSK