

SMT JUSTICE T. RAJANI

MACMA.No.790 of 2012

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, City Criminal Court, Hyderabad in OP.No.1226 of 2004 dated 16.12.2006, on the ground that the Court below did not award adequate compensation and ignored the medical bills, which are filed under Ex.A5.

2. Heard the counsel for the appellant. None appears for the respondents.

3. A perusal of the judgment of the Court below shows that it chose to award Rs.25,000/- towards injuries; Rs.2,000/- towards simple injuries; Rs.6,000/- towards medical expenses, Rs.4,000/- towards loss of earnings and Rs.3,000/- towards transportation charges.

4. The injuries sustained by the claimant are stated to be fracture injuries i.e. fracture to right clavicle and fracture mandible. In the light of the nature of the injuries, an amount of Rs.25,000/- awarded towards injuries, which can be taken as having been awarded for pain and suffering, seems to be adequate. But the Court below without any reason declined to award the whole of the medical expenditure incurred by the claimant, which is Rs.28,000/- as per the medical bills filed under Ex.A5; it awarded only Rs.6,000/-. The evidence of P.W.2 would show that the claimant took treatment and hence, the

remaining amount of Rs.22,000/- is also awarded towards medical expenses. Towards transportation, the award of Rs.3,000/- can be considered as meagre, as such, another sum of Rs.2,000/- is awarded towards transportation charges. The income of the claimant was not assessed. The claimant is stated to be a woman running a tea hotel in front of RTC bus stand, Bhongir.

5. The counsel for the claimant relied on a decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.¹ wherein the income of the vegetable vendor was taken as Rs.6,500/- per month. Hence, going by the said decision, Rs.6,500/- can be taken as the income of the claimant in this case also.

6. The injury, being on the clavicle, might have disabled the claimant from attending to her business at least for a period of 1½ month. Hence, Rs.6,500/- x 1½ = Rs.9,750/- would be the loss of income for the period of treatment, rest and recovery. Out of the same, Rs.4,000/-, which was awarded by the Court below is deducted and thereby, Rs.5,750/- would be the remaining amount under the said head.

7. The counsel also relied on the 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 claimant, being 25 years, the future hike has to be 40% as per the said decision.

¹ AIR 2014 SC 1052

8. If the future hike at 40% is added, the monthly income would come to Rs.6,500/- + (Rs.6,500/- x 40% = Rs.2,600/-) = Rs.9,100/-.

The Court below did not consider the disability certificate on the ground that P.W.2 did not specify that it is difficult for the claimant to lift weight and difficult to do work with right hand. The disability certificate shows that fracture was malunited. Hence, in the light of the said fact, the disability, as reflected in the disability certificate, is probable. Hence, the same can be accepted as 20% and the disability would result in loss of Rs.9,100/- x 20% = Rs.1,820/- per month and Rs.21,840/- per annum. The age of the deceased, being 25 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION² is '18'. Hence, the loss of future income to the claimant would come to Rs.21,840/- x 18 = Rs.3,93,120/-. Hence, in all, the claimant is entitled to total compensation of Rs.22,000/- + Rs.2,000/- + Rs.5,750/- + Rs.3,93,120/- = Rs.4,22,870/-. Though the compensation awarded exceeds the claim, now the law is well settled by virtue of the decision of the Supreme Court in RAJESH v. RAJBIR SINGH³, wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA⁴ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

9. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimant shall pay the differential

² (2009) 6 SCC 121

³ (2013) 9 SCC 54

⁴ 2015(4) ALD 585 (LB)

court-fee. 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.

December 21, 2017
DSK

T. RAJANI, J

