THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.120 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is claimant, assailing the order dated 07.05.2009 passed in MVOP.No.1692 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, (III-FTC) Warangal at Mahabubabad, on the grounds that the Court below did not award adequate compensation and it ought not to have taken into consideration the dues payable to the Geeta Parishramika Sahakara Sangam by the appellant and ought to have awarded more amount.

Heard the learned counsel on either side and perused the material on record.

The attack on the order of the Court below is mainly on the aspect of the compensation awarded towards the loss of future income. The learned counsel for the appellant contends that the claimant sustained 30% disability and he is a toddy tapper and auto driver. The disability is to the eye of the claimant hence, it would affect the avocations and consequently the income of the claimant.

The learned counsel for the respondent vehemently opposed the said contention of the disability and the certificate issued by P.W.2. He contends that at column No.8 disability stated to be is 30% caused due to left optic nurve avulsion but the doctor did not answer whether the said disability is by birth or is acquired later. But, however, the simple lapse of the doctor in not specifying the same, cannot be taken as a factor affecting the claim, if it is found otherwise to be genuine. It being under a beneficial legislation preponderance of probabilities would suffice to prove a fact. The injuries as noted in A3, medical certificate, are laceration over left side of forehead, laceration over left temporal region, abrasion over left side of the neck, which in all probability would have nexus with the avulsion in the eye. Hence, this Court perceives a clear nexus between the injuries and the disability sustained by the claimant. The disability as contended by the appellant's counsel would affect the avocation of the claimant, who is stated to be a toddy tapper, to some extent.

The income as taken by the Court below is Rs,3,000/- per month. This court is not inclined to interfere with the said income as the approach of the Court below in arriving at the said income cannot be found with fault when there was no evidence with regard to the income of the claimant. 30% of the said income would result in loss of Rs.900/- per month and Rs.10,800 per annum. The same multiplied with the appropriate multiplier, comes to Rs.1,83,600/-. Out of the said amount, Rs.75,000/- i.e. awarded by the Court below, towards loss of income has to be deducted. Then the remaining amount would be Rs.1,08,600/-. Therefore, the amount towards loss of future income stands enhanced to the said extent.

The award towards pain and suffering, which is Rs.10,000/- is also considered to be on the lower side hence, the same is enhanced by awarding another Rs.10,000/-. The award towards the medicines which is Rs.5,000/- needs no interference as no evidence was adduced. Only to the extent indicated above, the award of the Court below is modified.
In all, Rs.1,18,600/- (1,08,600+10000) is the enhancement of the compensation.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

In the result, the appeal is allowed in part with proportionate costs. Consequently, miscellaneous applications, if any, shall stand closed.

JUSTICE T. RAJANI

Date: 20.07.2018
LSK