

SMT JUSTICE T. RAJANI

MACMA.No.284 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the III Additional District Judge (FTC), Gadwal in OP.No.581 of 2008 dated 22.11.2011 on the grounds that the Court below erred in not believing the medical record filed by the claimant; it did not take into consideration the period of hospitalization, which is for about one month; it did not award transportation and attendant charges and erred in discarding the medical certificate.

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 took into consideration only Ex.A3, which is the wound certificate, which shows one simple injury. While relying on Ex.A3 would certificate, which is also not proved by examining the doctor, who issued it, the Court below refused to rely on Ex.A5 to A7, which are also documents pertaining to the treatment of the claimant, on the ground that the doctor, who treated the claimant, was not examined. In the considered opinion of this Court, the said approach is unsustainable.

4. The counsel for the appellant submits that the charge sheet, which shows that the driver was charge sheeted for the offence under Section 338 of the Indian Penal Code, would also spell the fact that claimant sustained fracture injuries.

5. In a beneficial legislation, hyper technical attitude cannot be appreciated. Ex.A5 is medical certificate issued by an Orthopaedic Surgeon, stating that the claimant sustained fracture to the right leg. Hence, going by the said document and also the charge sheet, which states the fact that the claimant sustained fracture injury, a sum of Rs.20,000/- is awarded towards pain and suffering, apart from Rs.3,000/-, which was awarded by the Court below. No document in proof of medical expenditure is filed by the claimant, hence, this Court is not inclined to interfere in that regard. Ex.A5 also shows that the claimant was advised rest for a period of one month. The claimant is stated to be a coolie, hence, Rs.3,000/- can be taken as his monthly income and Rs.3,000/- is awarded towards loss of income during the period of treatment, rest and recovery. Hence, the award of the Court below stands enhanced by Rs.23,000/- (Rs.20,000/- + Rs.3,000/- = Rs.23,000/-). Hence, in all, the claimant is entitled to total compensation of Rs.5,000/- (awarded by the Court below) + Rs.23,000/- (enhanced amount) = Rs.28,000/-.

6. Hence, the award of the Court below is modified as indicated above with proportionate costs. 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.

T. RAJANI, J

July 20, 2018
DSK