

SMT JUSTICE T. RAJANI

MA CMA No.420 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, questioning the judgment, dated 02.04.2007, passed by the IV Additional District Judge, Nizamabad, in O.P.No.1085 of 2003 on the grounds that the court below did not properly appreciate the medical certificate, Ex.A3 and failed to consider the fracture injuries sustained by the claimant and awarded only Rs.1,000/-.

2. Heard the counsel for the appellant. None appears for the respondent in spite of notice.

3. The facts of the case are that the petitioner sustained injuries in the accident on 22.08.2003, while he was travelling in auto rickshaw towards Nizamabad. The petitioner sustained fracture of both bones of left leg, fracture of left clavicle, fracture of right fore arm, injuries on head, chest, hands, legs, multiple and grievous injuries on the other parts of the body. He was immediately shifted to Government Hospital, Nizamabad. Later, he was admitted in a private nursing home and underwent several surgeries and a rod was also inserted in the leg. He spent Rs.1,00,000/- towards medical expenses.

4. Respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the averments of the petition and putting the petitioner to strict proof of all the averments made therein.

5. The lower court after framing appropriate issues, based on the pleadings, conducted the trial of the case and examined PWs.1 and 2 and marked Exs.A1 to A5 on behalf of the petitioner. The respondents examined RW1 and got marked Ex.B1. The court below considered that in Ex.A5, which is the case sheet, only one injury was noted and disbelieved Ex.A3, in which the fracture injuries are noted.

6. The counsel for the appellant submits that the said approach of the court is not on proper lines of appreciation of the evidence. A perusal of the FIR shows that the inmates of the auto sustained severe injuries and they were shifted to Government Hospital. The injury certificate-Ex.A3 is dated 03.08.2003 and the injuries, as noted therein, are fracture of both bones of left leg, swelling and deformity over left clavicle and left fore arm. The case sheet marked as Ex.A5 does not bear any date. But, however, it shows that the petitioner was advised to be taken for admission. If it was only simple injury, as noted therein, there would not be any need for the patient to be admitted in the hospital.

7. PW2, who is the Civil Assistant Surgeon, District Headquarters Hospital, Nizamabad, was also examined to speak about the injuries sustained by the petitioner. He testified about the injuries mentioned in Ex.A3. According to him, he examined the patient on 03.08.2003. Hence, merely because there is no mention about the injuries in the case sheet, it cannot be said that the injuries sustained by the petitioner, as mentioned in

Ex.A3, are not true. Moreover, the case sheet shows that the petitioner was advised for admission and hence, it has to be understood that on further investigation, based on the x-rays etc., the injuries of the petitioner were diagnosed. Hence, considering the nature of the injuries and considering the number of fractures injuries, this court opines that awarding Rs.15,000/- for each injury i.e., Rs.45,000/- would meet the ends of justice.

8. The petitioner did not file any medial bills, but however considering that he sustained three fracture injuries, this court is inclined to award Rs.25,000/- towards transportation and other incidental expenditure.

9. The petitioner is stated to be an agriculturist and vegetable vendor. Though no evidence was adduced in support of his income, which he contends to be Rs.10,000/- per month, considering his avocation and his age, which is 24 years, Rs.4,000/- can be taken as his monthly income. From the nature of the injuries, it can be assumed that the petitioner might have been unable to attend his work for a period of three months. Hence, Rs.12,000/- i.e., Rs.4,000/- X 3 is awarded towards loss of income during the period of treatment, rest and recovery.

10. In all, the appellant is entitled for an enhanced compensation of Rs.82,000/- i.e., Rs.45,000/- {for fracture injuries} + Rs.25,000/- {towards transportation and other incidental expenditure} + Rs.12,000/- {towards loss of income during the period of treatment, rest and recovery}.

11. Hence, the award stands enhanced to the extent indicated above and the rest of the award shall remain in tact. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

Accordingly, the MACMA is partly allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

August 3, 2018
LMV



T. RAJANI, J