

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.1013 of 2008

JUDGMENT:

1. The claimant in O.P.No.325 of 2004 on the file of the XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad, has preferred this appeal questioning the order dated 22.09.2007 passed in the aforementioned O.P.

2. The claimant states that the amount of compensation awarded to him by the Court below in respect of the injuries received by him in the accident occurred on 01.04.2003 is meager and low. His contention is that the Court below has totally discarded the evidence of P.W.3-Doctor who assessed the disability at 40%. The Court below assessed the disability of the claimant at 20% believing the contention of the 2nd respondent that the claimant can continue his profession as a Butcher as he has not received any injury to his right hand. The discharge summary record pertaining to the claimant and the medical certificate issued by the doctors are not taken into consideration and that the Court below has granted meager compensation without evaluating the oral and documentary evidence available on record in a proper perspective. His further contention is that though no evidence is adduced by the Insurance Company disproving the documents produced by the claimant establishing the nature of injuries sustained by him and the disability attained by him on account of the fracture injuries to right hip, left thigh, right knee and right occipital region, the Court below

instead of allowing his claim in toto, has passed the award granting meagre compensation of Rs.2,01,200/-. It is also the contention of the appellant-claimant that ignoring the evidence of P.W.3 and other medical evidence produced by him, the Court below has granted compensation of Rs.2,01,200/-, which is not fair and reasonable. He finally states that since the evidence on record has not been thoroughly appreciated by the Court below, this Court being an appellate authority by exercising the supervisory powers vested in it, can pass an appropriate order on re-appreciating the evidence on record.

3. Opposing the aforementioned contentions raised by the learned Counsel for the appellant-claimant, the learned Counsel appearing for the 2nd respondent-Insurance Company contended that the disability certificate, Ex.P8, was issued by a private doctor but not by the Medical Board. The claimant was working in a meat shop prior to the accident, he can continue the same work in the meat shop as a Butcher, as no injury is received to his right hand with which he can attend to the said work without any hindrance. The compensation amount of Rs.2,01,200/- awarded to the claimant in respect of the injuries received by him is excessive and exorbitant. The Court below cannot be found fault for assessing the disability at 20% since the claimant can attend to his work as a meat vendor.

4. Having heard the elaborate submissions made by both the parties, this Court is now called upon to answer the question

“whether the compensation amount of Rs.2,01,200/- awarded by the Court below is meager and low as contended by the claimant”.

5. I have gone through the order impugned in this appeal and also the oral and documentary evidence available in the case record.

6. Since the Counsel for the Insurance Company while making submissions has made an endeavour to impress upon this Court that the finding given by the Court below on the aspect of negligence attributed to the driver of the commandor jeep bearing No.A.P.28 H 4914 is incorrect, I feel it relevant to re-appreciate the evidence of the claimant who was examined to prove the manner in which the accident took place. It is consistently stated by P.W.1 in his evidence that the accident occurred on 01.04.2003 due to the rash and negligent driving of the driver of Commander Jeep bearing No. A.P 28 H 4914. The suggestion given to P.W.1 during the course of his cross-examination that the accident occurred only due to the fault of commandor jeep, but not due to the fault of driver of Tata Sumo itself is enough to hold that the contention raised by the learned Counsel for the 2nd respondent-Insurance Company that there is composite negligence on the part of the driver of Tata Sumo is totally incorrect. Relying on the oral testimony of P.W.1 which is fully supported by the contents of Exs.A1 and A2 i.e., certified copies of F.I.R. and charge sheet, the Court below has come to the right

conclusion that the accident occurred only due to the rash and negligent driving of the commandor jeep by its driver.

7. Coming to the issue relating to the quantum of compensation is concerned, it is evident from Ex.A5-Medical Certificate issued by P.W.2 that the claimant has received fracture injuries to his right hip, right knee and to the right occipital region. The claimant has examined P.Ws.2 and 3 for establishing the nature of injuries received by him and the treatment provided to him. The Court below upon appreciation of the evidence of P.Ws.2 and 3 has awarded compensation of Rs.20,000/- under the head of pain and suffering; Rs.50,000/- under the head of medical expenditure; Rs.5,000/- under the head of extra nourishment; Rs.5,000/- under the head of incidental expenditure and Rs.6,000/- under the head of loss of earnings during the period of treatment and bed rest. But, so far as the amount awarded under the head of 'loss of future earnings' due to disability, the Court below seems to have taken an incorrect view by discarding the evidence of P.W.3 whose evidence has not been disputed or disproved by any of the respondents.

8. Since no injury is received by the claimant to his right hand, the Court below seems to have assessed the disability at 20% and such assessment, in my view, has no basis at all, on the other hand, it is wholly contrary to the evidence on record. The reasons recorded by the Court below for assessing the disability at 20% discarding the evidence given by P.W.3 appears to be unreasonable. I am unable to

understand why the evidence given by P.W.3 in respect of the disability attained by the claimant is discarded and for what reason. Simply because of the reason that no injury is received by the claimant to his right hand, assessing of disability at 20% is wholly unfair. The evidence of P.W.3 and Ex.A8-Disability certificate would clinchingly establish the fact that the claimant sustained 40% disability. Taking into consideration the monthly earnings of the claimant as Rs.3,000/- and the percentage of disability at 40%, the annual loss of future income comes to Rs.14,400/- ($\text{Rs.3000/-} \times 40\% \times 12$). Since the claimant was aged about 38 years on the date of accident, the appropriate multiplier to be applied is 16. If the annual loss of future income is multiplied by 16, the total loss of future income comes to Rs.2,30,400/- The appellant-claimant thus, entitled to get the following amounts under various heads towards compensation:

1. Pain and suffering	.. Rs. 20,000/-
2. Medical expenditure	.. Rs. 50,000/-
3. Extra nourishment	.. Rs. 5,000/-
4. Incidental expenditure	.. Rs. 5,000/-
5. Loss of earnings during the period of treatment and bed rest.	.. Rs. 6,000/-
6. Loss of future earnings due to disability	.. Rs.2,30,400/-
	Rs.3,16,400/-

9. In the light of my aforementioned discussion, the appeal is allowed in part awarding compensation of Rs.3,16,400/- (Rupees

Three Lakhs Sixteen Thousand Four Hundred only) as against Rs.3,50,000/- together with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization and it shall be paid by the respondent Nos.1 and 2 jointly and severally. The appellant-claimant is permitted to withdraw the entire compensation amount at once.

Miscellaneous applications, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

28.02.2018
Gsn



JUSTICE J. UMA DEVI