

HON'BLE SRI JUSTICE P. KESHAVA RAO

MACMA.No.1440 of 2015

ORDER:

Heard the learned Standing counsel for the appellant Corporation and the learned counsel for the respondent.

The present appeal came to be filed challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Guntur (II Additional District Judge, Guntur) (for short, "the Tribunal") in M.V.O.P.No.1501 of 2012.

The facts in brief are that on 30.07.2012, the respondent and two others were proceeding on motor cycle and met with an accident. As a result of which, the respondent sustained grievous injuries and he was shifted to Tripuranthakam Government Hospital and from there he was shifted to Coastal Care Hospital, Guntur for better treatment. Even after discharge, he followed up the treatment. Because of the accident, the respondent became disabled and is not in a position to walk normally without support. The movements in his leg are restricted and thereby he sustained permanent disability. Since the respondent is aged about 30 years and does coolie work, his income was taken as Rs.3,000/- per month. He spent Rs.50,000/- on treatment. The appellant corporation filed written statement denying all the averments made in the petition. It is stated that there is no permanent disability and the amount claimed is excessive.

To support his contention, the respondent examined himself as PW.1 and PWs.2 and 3 and marked Exs.A1 to A3 and Exs.X1 to X4 on his behalf. The appellant has not examined any witness nor marked any documents.

The Tribunal after considering the material on record by orders dated 30.10.2014 in all granted Rs.81,231/- with proportionate costs and interest @ 9% per annum from the date of petition till the date of deposit.

Learned Standing counsel for the appellant basically contended that the Tribunal committed serious irregularity in granting compensation without there being any material on record. Though there is no reference with regard to disability in the grounds of appeal, the learned Standing counsel strenuously contended that the Tribunal erred in taking 8% disability while computing the compensation without any disability certificate and without there being any evidence in that regard. He further contended that the multiplier applied is also not correct and according to the age of the petitioner, as per the judgment of the Apex Court in **Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another**¹, the multiplier should be 16 but not 18.

Per contra, learned counsel appearing for the respondent supported the impugned order and submitted that the Doctor i.e., PW.2 categorically deposed that the movements in the leg are restricted and there is 10 to 15% disability. He also contended that age of the respondent should be taken as 30 years since in Ex.A2, wound certificate, his age is shown as 30 years.

Having heard both the counsel and from a perusal of the material on record, the questions that arise for consideration are:

Whether the age of the respondent is 30 or 40 years on the date of accident?,

Whether the multiplier 16 or 18 is applicable? and

¹ (2009) 6 SCC 121

Whether there is any disability as held by the Tribunal?

The respondent himself examined as PW.1 and narrated the contents of the petition. To substantiate his contention that there is disability, he examined one Dr. Bindesh as PW.2. In his chief examination, PW.2 stated that on examination of the respondent in the Court premises, he found that he is unable to flex his knee about 100 degrees and its consequence is that he cannot do hard labour. The percentage of the disability can be 10 to 15% and it is a partial disability. The said disability may be increased or decreased. In his cross-examination, it is elicited that the disability stated is connected to that particular limb only. If the respondent undergoes physiotherapy, there is possibility of reduction of disability. The evidence of PW.1 vis-à-vis the disability is concerned, is supported by the evidence of PW.2. Therefore, the contention of the learned Standing counsel for the appellant that there is no material on record with regard to disability cannot be accepted.

Coming to the second contention i.e., about the age of the respondent is concerned, in the claim petition as well as in the wound certificate the age of the respondent is mentioned as 30 years. However, in the charge sheet i.e., Ex.A3, his age is shown as 40 years. Learned Standing counsel for the appellant Corporation contended that the respondent has not produced any cogent evidence by producing any authenticated document to show his age. However, on record the documents filed by the respondent himself give two contradictory ages i.e., 30 years in Ex.A5 and 40 years in Ex.A3. From a perusal of the material on record, there is no forthcoming evidence on this aspect. Therefore, this Court is

inclined to accept the age of the respondent on the date of the accident as 35 years. If the same is taken into consideration, as per the judgment in **Sarla Verma (supra)**, the multiplier that is applicable is 16, but not 18 as taken by the Tribunal. Therefore, to that extent the order of the Tribunal has to be modified.

Accordingly, the appeal is allowed in part modifying the impugned order by reducing the loss of income from 51,840/- to Rs.46,080/- by taking the multiplier as 16 (Rs.36,000/- x 16/100) only. The rest of the order remains undisturbed.

Miscellaneous petitions, if any, shall stand closed.

P. KESHA RAO, J

Date: 15.12.2018.
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