THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.3314 of 2012

JUDGMENT:

This appeal is preferred by the claimant, assailing the judgment dated 13.08.2012 passed in O.P. No.1153 of 2009 by the Chairman, Motor Accidents Claim Tribunal-cum-XXI Additional Chief Judge, Hyderabad, on the grounds that the Court below failed to award compensation by considering physical disability to the extent of 20%; it ought to have considered that as the appellant is a mechanic, taken shed on rent and engaged seven workers; and ought to have awarded the compensation as claimed under various heads.

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

This is a case of injury sustained by the appellant in a motor accident. He was working as a mechanic prior to the accident and was earning Rs.30,000/- per month. Though the Court below did not accept the disability, by considering that it is stated to be not permanent disability, the doctor who spoke disability was examined as P.W.2. A perusal of the evidence of the doctor contradicts the finding of the Court below that the disability is not a permanent disability. P.W.2 categorically stated that the patient was clinically examined and he was having stiffness to his left forearm. He assessed the appellant's disability as 20%, which is partial and permanent in nature. Hence, there need not be any reason to ignore the evidence of P.W.2, about the disability stated by him to be partial and permanent.

With regard to the income of the appellant, the Court below ignored the income tax returns filed by him, which pertain to the assessment years 2004-2005 and 2005-2006, and are prior to the date of accident. Hence, the income tax return was marked as Ex.A-13 can be taken into consideration for assessing the income. The income for the assessment years 2004-2005 is shown as Rs.70,018 whereas, for the assessment years 2005-2006 the income is shown as Rs.1,10,565/-. So if the income reflected in the income tax return for the assessment years 2004-2005 is taken, his income comes to be around Rs.9,000/- per month. Hence, considering that the same would increase in future as there are fluctuations in the income of the appellant, Rs.10,000/- can be taken as his monthly income. For the disability of 20%, his loss of monthly income would be Rs.2,000/- and Rs.24,000/- per annum. The age of the appellant was considered to be 59 years. Hence, appropriate multiplier for his age is 9 as per ***SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER***[1]. Hence, 24000x9=2,16,000/- is awarded towards loss of future income due to the disability.

Since the award of the Court below is not assailed on any other grounds, to the extent indicated above, the judgment of the Court below stands modified. The total compensation would then come to Rs.3,58,000/-.

When the learned counsel for the respondents contended that the awarded amount can be restricted to the claim amount, the counsel for the appellant by placing reliance on the case of **JITENDRA KHIMSHANKAR TRIVEDI AND OTHERS v. KASAM DAUD KUMBHAR AND OTHERS**[2] submits that therein it was observed that the power of the Courts in awarding reasonable compensation was emphasized by the Court in **NAGAPPA v. GURUDAYA SINGH**[3], **ORIENTAL INSURANCE CO. LTD. V. MOHD. NASIR**[4] and **NINGAMMA v. UNITED INDIAINSURANCE CO. LTD.**[5]. In the above rulings, it was

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[1] (2009) 6 Supreme Court Cases 121
[2] (2015) 4 Supreme Court Cases 237
[3] (2003) 2 SCC 274
[4] (2009) 6 SCC 280
[5] (2009) 13 SCC 710

further observed that even in case no appeal is filed by the claimants, it is obligatory on the part of Courts to award just and reasonable compensation. Hence, the above amount is awarded by applying the said principle.

The claimant shall however pay requisite differential Court fee on the enhanced 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 with proportionate costs.

JUSTICE T. RAJANI

Date: 13.07.2018
LSK