

SMT JUSTICE T. RAJANI

MA CMA No.159 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, questioning the judgment, dated 13.10.2011, passed by the II Additional District and Sessions Judge, Guntur, in M.V.O.P.No.216 of 2010 on the grounds that the court below failed to appreciate that as on the date of accident, the claimant was hale and health and was also doing business and he was an income tax assessee; it failed to appreciate that during the pendency of the claim petition, the condition of the claimant has deteriorated; it ought to have seen that it is the specific case of the claimant that an amount of Rs.4,80,000/- is spent towards medical expenses and other heads; it failed to appreciate that the claimant was admitted in the hospital on 12.12.2006; that even as on the date of discharge there is deformity in speech and Exs.A3 to A6 clearly indicate the same; it failed to appreciate that the disability certificate issued by the medical board, under Ex.A4, does not require any proof; it failed to appreciate that PW2, who was a retired Doctor of NIMS, who treated the claimant, categorically deposed in his evidence that the injuries sustained by the claimant are grave in nature; the court below having awarded the hospital expenditure as evidenced by Exs.A5, A6 and A8, ought to have awarded expenditure of the claimant; it erred in coming to a conclusion that the accused has landed property and

no loss is caused to him. Based on the above, the appellant seeks to set aside the judgment of the court below.

2. Heard the counsel for the appellant. None appears for the respondents.

3. This case pertains to the claimant sustaining injuries in a motor accident, which occurred on 12.12.2006. The claimant sustained head injury and took treatment with PWs.3 and 4. The medical record pertaining to the petitioner is also marked in the form of Exs.X1 and X2. The court below by considering that the medical record-Exs.X1 and X2 does not disclose that there was disability to the petitioner, as stated by PWs.3 and 4, disbelieved the contention of the petitioner that he was disabled. But, a perusal of Ex.X1, which is the discharge summary, issued by VRLS Memorial Neuro Hospital, Vijayawada, would show that the petitioner was admitted in the hospital on 12.12.2006 and discharged on 17.01.2007. The condition at the time of discharge, as noted therein, is that the claimant was conscious, moving all four limbs, receptive asphasia, no focal neurological deficit, afebrile, operative site normal. Subsequent to the treatment, which is evidenced by Ex.X1, the claimant joined Yashoda hospital on 28.05.2007 and was discharged on 29.05.2007. The history recorded therein shows that the claimant sustained injury six months back and went into coma and had a head injury and that he visited Yashoda hospital with a complaint of neck pain and pain in all four limbs during simple walk. It was also noted that the petitioner was bed ridden since

then. The condition of the petitioner at the time of discharge on 17.01.2007 is also noted down elaborately under Ex.X2, which shows that he developed pain and weakness in all four limbs.

4. Hence, in the background of the history, recorded in Exs.X1 and X2, when there is no motive that is made out against PWs.3 and 4 to speak falsely with regard to disability, there was no reason for the court below to disbelieve the evidence of PWs.3 and 4, who stated about the disability. The disability certificate was marked as Ex.A4. The petitioner sustained 75% disability, which is recorded as due to quadri paralysis. Hence, there need not be any hesitation in accepting the disability as evidenced by Ex.A4. It is not necessary that the person, who issued the disability certificate, need to be examined, in order to prove the disability. If the disability, as evidenced by the certificate, stands proved by the evidence of the other doctors who are equally competent to speak about the disability, there need not be any hesitation to believe the same.

5. Having concluded that the claimant sustained 75% disability, the amount that needs to be awarded towards loss of income caused by the said disability has to be assessed. The claimant is stated to be an agriculturist. The court below observed that the son of the injured is continuing cultivation in the lands owned by the injured and hence there is no loss of income. But, however, had the injured been active, he would have looked after the lands, thereby providing an opportunity for his son to pursue another avocation in order to make his own

income. Hence, in the least, the loss of supervisory charges has to be taken into consideration, for assessing the compensation. The supervisory charges can be estimated at Rs.4,000/- per month. In the absence of any specific evidence, 75% of the disability would result in loss of Rs.3,000/- per month, and Rs.36,000/- per annum. The age of the injured being 45 years, the multiplier relevant for the said age is '13', as per the ruling of the apex court in *Sarla Verma v. Delhi Transport Corporation*¹. Hence, Rs.4,68,000/- i.e., Rs.36,000/- X 13 is awarded towards loss of future income to the claimant. The rest of the award of the court below is not assailed.

6. Hence, to the extent indicated above, the award of the court below stands modified. 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.

Accordingly, the MACMA is partly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

July 27, 2018
LMV

¹ (2009) 6 SCC 121