

SMT. JUSTICE T.RAJANI

MA.CMA.NO.324 OF 2012

JUDGMENT

This appeal is preferred by the appellant, who is the injured/claimant, assailing the judgment of V Additional District and Sessions Judge, Medak at Sangareddy in MVOP.No.791 of 2005 dated 07.08.2007, on the ground that the court below erred in granting meager compensation, without considering that the claimant sustained multiple grievous injuries and that at the time of admission in the hospital, his coma score was 11/15 and at the time of discharge, it was 13/15 and that there was mental impairment. The court below erred in not granting any amount under the head of future loss of income, though the claimant sustained 100% disability. The court below erred in granting meager amount of compensation, without considering the fact that after retirement, the claimant was running STD booth and was earning Rs.3,000/- per month.

On the above grounds, the claimant seeks this court to set aside the judgment of the court below.

Heard both the counsel.

The claimant sustained injuries in a motor accident, which occurred on 11.08.2005. While he was going on a scooter, he was dashed by an

auto, which came from behind. Hence he sustained multiple injuries and was admitted in Government Hospital, Siddipet and later, he was referred to Gandhi Hospital, Secunderabad and subsequently, he was referred to Apollo Hospital, where he stayed as inpatient from 11.08.2005 to 31.08.2005 and underwent surgery.

He was a retired teacher by the date of accident and after retirement, he was running STD booth earning Rs.3,000/- per month.

The court below did not accept that the claimant sustained disability. The court below however observed that the coma score at the time of admission of the claimant was 11/15 and at the time of discharge, the coma score was 13/15. It also noted that there is possibility of having long consequences following brain injury and that he requires various kinds of supporting care and that there is possibility of having memory impairment.

The injuries sustained by the claimant are (1) lacerated wound over left temporal occipital region sustained from outside, and (2) fracture of left 2 and 3 ribs.

The court below awarded Rs.65,000/- towards pain and suffering for grievous injuries. It declined to accept the medical bills marked under Exs.A-5 to A-7 by considering that there are so many other items, such as

room rent, nursing and hospital utility charges, and awarded only an amount of Rs.15,000/- towards medical expenses.

Except awarding amounts under the said two heads, it did not award any amount under other heads.

The counsel for the appellant/claimant contends that the claimant was earning Rs.3,000/- per month by running STD booth, after his retirement. But during trial, absolutely no evidence was adduced in support of this fact. The court below also considered the same and did not accept that the claimant was making any earnings after his retirement.

In the light of the fact that the claimant worked as teacher and retired and that he was drawing pension of Rs.6,000/-, unless there is concrete evidence that he was running STD booth, it cannot be accepted that a retired teacher would take up the avocation of running an STD booth. Moreover, there would be permissions required for running STD booth, but no such documents are filed before the court. Hence, it cannot be accepted that the claimant was making any earnings after his retirement.

But however, the evidence of P.W.3 would show that the claimant is likely to sustain disability. He categorically stated that there is possibility of the claimant having long term consequences, following the brain injury

and that he would require various kinds of supporting care. He also spoke about the possibility of having memory impairment, following injuries. But however, according to him, assessment of mental functions will have to be taken by neuro psychologist. In the cross-examination, he also spoke about the coma score being 11/15 at the time of admission and 13/15 at the time of discharge, which would indicate that the condition of the injured deteriorated by the time of his discharge. The same is not disputed by the counsel for the respondent.

But the counsel for the respondent vehemently contends that what is stated by P.W.3 is only a possibility of the claimant having long term consequences. There can be no denial of the fact that the said disability, coupled with the proved deterioration of condition, would in all probability, suggest that the claimant would sustain disability in future.

The observation of the lower court that none of the witnesses spoke about the disability, is found to be incorrect, as the evidence of P.W.3 would nevertheless speak about the possibility of disability.

The contention of the respondent's counsel that a witness can be considered as having spoken about the disability, only if he states that there is existing disability as on the date of giving evidence, is somehow not found to be merited. The court has to gather from all the

circumstances available, as to whether such disability, is in fact sustained by the claimant or that he is likely to sustain.

P.W.1 in her evidence stated that her husband, who is the claimant, is not in a position to speak and move freely. The counsel for the appellant seeks the court to draw inference, from the fact that the claimant could not come to court and that only P.W.1 who is his wife had to depose on behalf, that the injured is not in a position to come to court as he sustained disability. The said contention holds some water.

The contention of the respondent's counsel that no value can be attached to the evidence of P.W.1, that claimant is not in a position to speak and move freely, as she is self-serving witness, is not found to be merited. If all the witnesses who are interested in the subject matter of the litigation have to be considered as self-serving, then, their evidence is to be totally discarded. That would be against the principles of law. The evidence of any witness coming before the court has to be scrutinized and it has to be sieved, in order to get at the truth of the matter. In this case there is supporting evidence to the evidence of P.W.1. That would make her evidence reliable.

Hence, this court does not demur to conclude that the claimant sustained disability and is not in a position to do much work. But however, having concluded that he is not making any earnings after his retirement,

the amount that can be awarded by considering the disability would have to be only towards loss of amenities.

Considering the nature of disability, this court is inclined to award an amount of Rs.2,00,000/- (Rupees two lakhs only) towards loss of future amenities of life.

With regard to medical expenses, the approach of the lower court in discarding Exs.A-5 to A-7, from consideration, cannot be sustained. The observation that the said exhibits include room rent, nursing and hospital utility charges, cannot lead the court to dismiss the claim for medical expenditure in the said exhibits. Room Rent, nursing charges and hospital utility charges are all due to the treatment that the claimant had to take by staying in the hospital. Hence, the claimant would be entitled to the said amount. Hence, Rs.2,10,451/- (Rupees two lakhs, ten thousand, four hundred and fifty one only) is awarded towards medical expenditure, after deducting Rs.15,000/- (Rupees fifteen thousand only) which is already awarded by the court below.

The lower court also did not award any amount towards incidental expenditure like transportation etc.

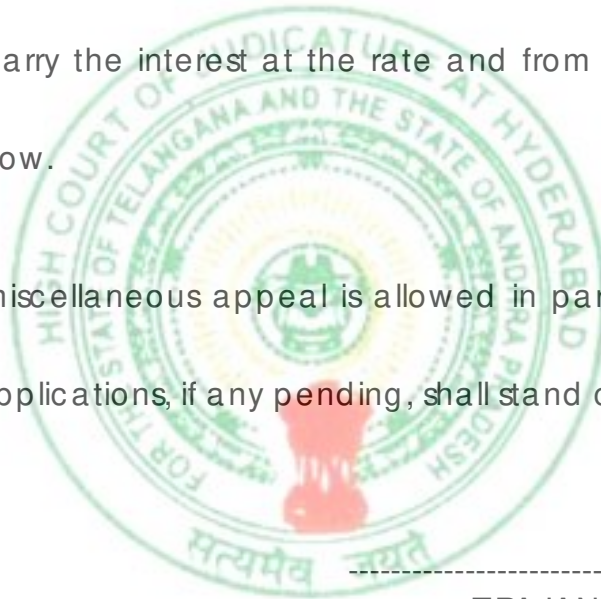
Considering that the claimant sustained grievous injuries and had been as in patient in the hospital for a considerable period, and that he

also requires further treatment, Rs.50,000/- (Rupees fifty thousand only) is awarded towards the incidental expenditure.

Hence, in all Rs.5,25,451/- rounded off to Rs.5,26,000/- (Rupees five lakhs twenty six thousand only) is awarded. The awarded amount includes the amounts already granted by the court below.

The award of the Court below is modified as indicated above, with proportionate costs. The claimant shall pay the differential court-fee. 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.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.



T.RAJANI,J

DATE: 31--07--2018

AVS