**SMT. JUSTICE T.RAJANI**

**MACMA. No.1435 of 2012**

**JUDGMENT:**

This appeal is preferred by the claimant, assailing the order dated 01.12.2011 passed in O.P. No.702 of 2009 by the IX Additional District Judge-cum-Motor Accident Claims Tribunal (Fast Track Court), Visakhapatnam, on the grounds that the Court below erred in granting meager compensation by brushing aside the oral and documentary evidence, it failed to appreciate the disability certificate, coupled with oral evidence of P.W.2, who categorically deposed before the Court below about the permanent disability and thereby committed an error in not granting any amounts under the head of loss of future income; the Court below erred in not granting any amounts under the head of pain and suffering. On the above grounds the appellant seeks to set aside the impugned judgment.

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

The facts of the case, in brief, are that the appellant on 06.06.2008 boarded the auto bearing No.AP7-T-9102 at Kapparada North service road, which was proceeding towards Maddilapalem. When it reached opposite to Tikkavanipalem, due to the rash and negligent driving of the driver of auto, it went and dashed the dustbin. Due to the same the appellant and another passenger in the auto sustained injuries and they were shifted to K.G.Hospital. The appellant sustained a fracture to the left femur and to other parts of the body, and he was inpatient in the Hospital from 06.06.2008 to 12.07.2008. Surgery was performed on him on 16.06.2008. After discharge from the hospital, he was forced to admit in Aditya Multi Care Hospital, as the wound was infected and was inpatient there from 26.09.2008 to 29.09.2008. In that hospital, operation was performed on 28.09.2008 by removing steel plates and POP was applied. As the fracture was not united, he was again admitted in K.G.Hospital on 12.11.2008 and was treated as inpatient till 22.11.2008. As puss was formed, he again admitted in the KG Hospital and took treatment from 17.12.2008 to 23.12.2008 and surgery was performed on 12.12.2008. For the removal of implants and POP, he was again admitted on 17.02.2009 and was discharged on 24.04.2009 and surgery was conducted on 17.02.2009. The appellant was working as Security Guard and was earning Rs.4,000/- per month. Because of the injuries he sustained disability and he is not in a position to continue his job.

Respondents 1 and 2 filed their counter affidavit denying the averments of the claim petition and contended that the claim is excessive.

The Court below, considering the rival pleadings, framed appropriate issues and during the course of trial, examined P.Ws.1 and 2 and marked Exs.A-1 to A-11 on behalf of the appellant and R.Ws.1 and 2 were examined and Ex.B1 and Exs.X1 and X2 were marked on behalf of the respondents. After considering the evidence on record, the Court below awarded Rs.32,500/- with proportionate costs and interest at 7.5% per annum from the date of claim petition till the date of realization fixing the liability on the respondents 1 and 2 jointly and severally.

The learned counsel for the appellant assailed the impugned judgment on the grounds that the Court below misconstructed the date by taking the date of discharge as 22.12.2008 which in fact is 22.11.2008. He draws the attention of this Court to the evidence of the P.W.2, who spoke about the date of admission and discharge. It is stated by him that the appellant was admitted in the hospital on 12.11.2008 and discharged on 22.11.2008. It is further stated by P.W.2 that the appellant was again admitted on 17.12.2008 with infected nail and he drained out the puss and sent it for culture and sensitivity test, by daily dressings and discharged on 23.12.2008. The Court below by considering the date of first discharge as 22.11.2008, observed as anomaly as to how the appellant is discharged on 22.12.2008. Hence, by reading the evidence of P.W.2, as such, the appreciation of the Court below seems to be based on erroneous consideration of the date of first discharge. Hence, with the above explanation, it becomes clear that the appellant sustained injury of left femur and admitted in the hospital on three occasions and that there was infection to his left leg. Hence, in the above circumstances, it would be appropriate to award Rs.20,000/- towards pain and suffering, which the Court below did not choose to award. In respect of the medical bills, which are filed under Ex.A10, to an extent of Rs.48,263/-, the Court below however, did not consider the said medical bills, by disbelieving the evidence of P.W.2. Since the evidence of P.W.2 is considered as confidence inspiring, there need not be any reason to disallow the medical bills. Hence, Rs.48,263/- is awarded towards medical bills. The Court below awarded only Rs.32,500/-, in lump sum, without specifying the heads under which it was awarding the said amount. However, keeping in view the fact that the appellant sustained fracture to his leg, it can be said that in all probability, he might have incurred Rs.10,000/- for transportation. Therefore, the same is awarded towards transportation expenses. Regarding the income of the appellant, the Court below took Rs.2,500/- as the income of the appellant. The appellant is stated to be working as Security Guard and as per several decisions of the Supreme Court, even for a coolie, the income is being taken as Rs.4,500/-. Hence, the income, as stated by the appellant, at Rs.4,000/- need not be disbelieved. Considering that the period of treatment, recovery and rest is for ten weeks, the amount of Rs.7,500/- awarded by the Court below, is enhanced to Rs.10,000/-.

Regarding the disability of the appellant, the disability certificate, which was issued by the medical board, says that the appellant sustained 50% of the disability. Shortening of leg by one inch was spoken by P.W.2, which fact is disbelieved by the Court below, holding that the said fact is not mentioned in the disability certificate. Even otherwise the disability certificate shows that there was 50% disability and it reveals that post traumatic right thigh and right knee joint is there, which was observed by the Court below also. The nature of the treatment, which evidences that the appellant developed infection to his leg, would suggest that the disability might have resulted from the injuries. Hence, 50% of the disability as stated by the P.W.2 can be considered for computing the loss of future income of the appellant.

The learned counsel for the appellant takes the help of the judgment of the Apex Court rendered in the case of ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[1] in support of his contention that the future prospects of the appellant also have to be considered at the rate of 40% as he is aged 30 years by the date of accident. After considering the future prospects as specified by the Apex Court in the case one supra the monthly income of the appellant would be Rs.5,600/-. The loss of earnings of the appellant due to disability of 50% would be Rs.2,800/- per month and the loss of annual earnings would be Rs.33,600/- (2800 x 12) and the relevant multiplier for his age would be 17. Hence, Rs.5,71,200/- (33600 x 17) is awarded towards loss of income due to disability of the appellant. In all, the awarded amount comes to Rs.6,59,463/- i.e. (20,000 + 48,263 + 10,000 + 10,000 + 5,71,200) (towards pain and suffering, medical bills, transportation expenses, treatment recovery and rest and loss of future

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[1] MANU/SC/1366/2017

income, respectively) which can be rounded off to Rs.6,59,500/-. From the above amount Rs.32,500/-, which was awarded by the Court below, has to be deducted. Then the compensation would be Rs.6,27,000/-.

When the learned counsel for the Insurance Company 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 the Supreme Court 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 INDIA INSURANCE CO. LTD.**[5]. In the above rulings, it was further observed that even in case where no appeal is filed by the claimants, it is obligatory on the part of Courts to award just and reasonable compensation. Hence, the aforesaid amount is awarded by applying the said principle.

The appellant 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.

Consequently, miscellaneous applications, if any, pending shall stand closed.

**JUSTICE T. RAJANI**

**Date: 10.08.2018**
**LSK**

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