

SMT JUSTICE T. RAJANI

MACMA.No.186 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the II Additional District Judge, Guntur in MVOP.No.1060 of 2003 dated 11.07.2006 on the grounds that the Court below erred in fixing the income of the claimant at Rs.2,500/- per month, though salary certificate, Ex.A9 and evidence of P.W.2, categorically demonstrate that he was getting salary of Rs.5,000/- per month; it erred in considering the disability of the claimant at 70% in spite of the evidence that there was 80% disability; it erred in applying 13 as multiplier in stead of 14 and the Court below erred in awarding only Rs.55,745/- towards medical expenses and transport, in spite of there being proof for Rs.2,17,188/-

2. Heard both sides.

3. This is a case where the claimant met with an accident on 07.09.2002 and sustained injuries, which lead to amputation of his right leg up to thigh. He was working as a Supervisor in Sai Lakshmi Agencies and was aged 35 years at the time of the accident and his salary is Rs.5,000/- per month, apart from batta of Rs.20/- per day.

4. The Court below considered the disability as 70% only, though P.W.3 certified that there is 80% disability. There is absolutely no reason stated by the Court below in taking only 70% as disability as against 80%. However, if the disability does not affect the income of the claimant to the extent of 80%, the Court can take the disability

depending upon its impact on the earnings of the claimant, but no such discussion was taken up. Hence, the evidence of P.W.2, who is the employer of the claimant, can be looked into to assess the impact of the said disability on the avocation of the claimant. According to his evidence, the claimant was working as Supervisor cum clerk in the petrol bunk and he was paid Rs.5,000/- per month. Hence, the nature of work of the claimant, as stated by P.W.2, can be understood to be mostly a desk job. Hence, the disability may not affect the income of the claimant to the extent of 80%. Hence, going by the above reasoning, 70% of the disability taken by the Court below can be sustained. The evidence of P.W.2 does not specifically show that the claimant was discontinued from his job. He only stated that the claimant was working with him till he met with the accident. However, even if it is a case of amputation, the claimant can take up some work with the help of artificial leg. Hence, 70% is taken as the disability affecting his income.

5. The income of the claimant was taken as Rs.2,500/- per month by the Court below. The Court below did not believe the evidence of P.W.2 with regard to the income of Rs.5,000/- stated by him on the ground that he did not bring supporting registers and documents in proof of the same. But, however, even if the income, as stated by P.W.2 is not believed, the income taken as Rs.2,500/- seems to be on the lower side. Hence, Rs.3,500/- can be taken as the monthly income of the claimant. 70% of the disability would result in loss of Rs.2,450/- per month i.e. $(Rs.3,500/- \times 70\% = Rs.2,450/-)$ and Rs.29,400/- per annum i.e. $(Rs.2,450/- \times 12 = Rs.29,400/-)$. The multiplier relevant

for the age of the claimant, which is 35 years, is 16. Hence, the loss of future income due to disability would be $\text{Rs.}29,400/- \times 16 = \text{Rs.}4,70,400/-$.

6. The Court below also declined to accept the medical bills produced by the claimant, which are to the extent of $\text{Rs.}2,17,188/-$ and awarded only $\text{Rs.}55,745/-$, considering that some of the bills contained advanced receipts. This Court is unable to understand as to how the advanced receipts cannot be taken into consideration, as the same would evidence only the payment made by the claimant. Moreover, from the nature of the injuries, it can be assumed that the claimant would be incurring the expenditure as evidenced by the medical bills. Hence, the remaining amount of $\text{Rs.}1,62,043/-$ is awarded towards medical expenditure. The Court below did not award any amount towards pain and suffering and no reasons are stated for not awarding the same. Hence, considering that this is a case of amputation, $\text{Rs.}30,000/-$ is awarded towards pain and suffering. Hence, the claimant is entitled to enhanced compensation of $\text{Rs.}1,97,400/-$ i.e. $(\text{Rs.}4,70,400/- - \text{Rs.}2,73,000/- = \text{Rs.}1,97,400/-) + \text{Rs.}1,62,043/- + \text{Rs.}30,000/- = \text{Rs.}3,89,443/-$, apart from the award of the Court below.

7. Though the compensation exceeds the claim amount, now the law is well settled by virtue of the decision of the Supreme Court in *RAJESH v. RAJBIR SINGH*¹, wherein it was held that the compensation has to be just and it can exceed the claimed amount.

¹ (2013) 9 SCC 54

This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA² held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

8. Hence, 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.

July 20, 2018
DSK



T. RAJANI, J

² 2015(4) ALD 585 (LB)