

SMT. JUSTICE T.RAJANI

MACMA. No.225 of 2012

JUDGMENT:

This appeal is preferred by the claimant, assailing the award dated 12.07.2011 passed in O.P.No.531 of 2008 by the District Judge, Karimnagar, on the grounds that the Court below did not award adequate compensation, though the claimant suffered brain injury and developed weakness and tiredness on the right side limbs of the body and sustained 60% disability; the Court below ought to have seen that the claimant was hale and healthy and he was working as stone scripser and running a shop and earning Rs.8,000/- per month and due to the injuries sustained in the accident he is not able to attend his work and thereby he lost his earnings.

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

The facts of the case, in brief, are that on 30.01.2007 while the claimant was traveling along with one Maddela Rajender on his Hero Honda motorcycle bearing No.AP-15-5250 and reached near Kurkial village cross road, the first respondent came in a rash and negligent manner, in high speed, from opposite direction, on TVS Star motorcycle bearing No.AP-15-AB-4409 and dashed the motorcycle of the claimant. As a result, both of them fell down and the claimant sustained multiple injuries. Immediately he was shifted to the hospital in 108 Ambulance and he was treated in different hospitals. It is his case that prior to the accident, he was earning Rs.8,000/- per month by working as stone scripser (painter).

The respondents 1 and 2 filed counter affidavit, denying the averments of the claim petition and the 3rd respondent also filed counter, affidavit on the same lines of the counter of the respondents 1 and 2, and

further contending that the accident occurred due to collision between two motorcycles and therefore, the negligence has to be apportioned between the drivers of two vehicles.

The Court below, considering the rival pleadings, framed appropriate issues and during the course of trial, examined P.Ws.1 to 4 and got marked Exs.A-1 to A-17 on behalf of the claimant. R.W.1 was examined and Ex.B1 marked on behalf of the respondents. After considering the evidence on record, the Court below awarded Rs.3,07,000/-, with proportionate costs and interest at 7.5% per annum from the date of claim petition till the date of actual deposit, holding respondents 1 to 3 jointly and severally liable to pay the same.

The learned counsel for the appellant/claimant mainly assails the impugned judgment on the ground that no amount was awarded towards loss of future income to the claimant, by disbelieving the disability sustained by the claimant.

The Court below, considering that the Doctor, who issued the disability certificate, was not examined, declined to believe the evidence of P.Ws.2 and 3, who are doctors who spoke about the disability under Ex.A-17, disability certificate, which shows 60% as disability. The doctors, examined as P.Ws.2 and 3, nevertheless spoke about the disability sustained by the claimant. P.W.3 stated that the claimant sustained comminuted non-union fracture of both bones of right leg upper third and right side hemiplegia. He operated the first injury on 17.03.2007 by interlocking nailing of right tibia. He was admitted in the hospital on 12.03.2007 and was discharged on 28.03.2007. He was advised aggressive physiotherapy for three months and regular follow up for every fifteen days. He further stated that the fracture was united, but because of right hemiplegia he was unable to walk properly. He clearly stated that the fracture is united and there is no orthopedic

disability. P.W.2 spoke about the claimant sustaining capsule ganglionic bleed involving the brain on the left side and comminuted fracture of both bones of right leg. The claimant was admitted in the hospital on 30.01.2007 and was discharged on 14.02.2007. He further stated that both the injuries are grievous in nature and due to the injury in the brain, the claimant developed weakness and tiredness on the right side limbs of the body, both upper and lower and thus there is considerable difficulty in speaking and walking and he cannot do purposeful activity with his right hand and he cannot come to the normal position, even in future. There is possibility of fits, but it can be controlled by the medicines. He further stated that the claimant requires treatment for five more years.

From the evidence of P.Ws.2 and 3 it is evident that the claimant sustained disability. Though the extent of disability was not spoken by P.Ws.2 and 3, this evidence supports the percentage of disability mentioned in Ex.A-17 at 60%. The income of the claimant was also not discussed by the Court below.

The claimant is stated to be a Painter earning Rs.8,000/- per month but no supporting evidence was advanced for his avocation. Though P.W.4 spoke about the avocation and income of the claimant, the same cannot be accepted. But this Court opines that ends of justice would meet in considering the income of the claimant Rs.4,500/- and the same is taken as his monthly income.

By placing reliance on the case of **NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS**¹ the learned counsel for the claimant seeks this Court to consider the future prospects of the claimant at 25%. When the same is accepted, the monthly income of the claimant would be Rs.5,625/- and the loss of

¹ MANU/SC/1366/2017

monthly income due to disability at 60% would come to Rs.3,375/- and Rs.40,500/- would be annual loss of income to the claimant due to disability. As per **SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER**² appropriate multiplier for the age of the claimant is 14 and applying the same, Rs.5,67,000/- would be the loss of future income of the claimant and the same is substituted to the amount already granted under the head of loss of earnings i.e. Rs.75,000/-.

The learned counsel for the claimant submits that P.W.3 spoke about the requirement of future surgery of the claimant but he did not specify the cost of the said surgery. Considering the same, Rs.20,000/- is awarded towards cost of future surgery. Hence, in all Rs.5,87,000/- would be the enhanced amount of compensation, apart from the amount granted by the Court below under other heads.

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 partly allowed with proportionate costs.

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

JUSTICE T. RAJANI

Date: 10.08.2018
LSK

² (2009) 6 Supreme Court Cases 121