SMT JUSTICE T. RAJANI

MACMA No.3223 of 2012

JUDGMENT:

This appeal is filed by the appellants, who are the claimants before the court below, assailing the judgment of the District Judge & Motor Accidents Claims Tribunal, Srikakulam, in MVOP.No.463 of 2008, dated 23.08.2012, on the grounds that the court below did not appreciate the aspect of negligence properly and dismissed the OP, which is not sustainable; the court below also did not award adequate compensation.

2. Heard the counsel for the appellants as well as the counsel for the respondents.

3. A perusal of the judgment of the court below shows that it was very much influenced by the fact that the vehicle which hit the deceased fled away and that it was detected during the course of investigation. It was not inclined to believe the conclusion in the charge sheet, by observing that the charge sheet does not explain as to how the police could detect the vehicle. However, it observed that the involvement of the vehicle was not specifically denied by the respondents.

4. In the above circumstances, the court below ought to have accepted the contents of the charge sheet and the findings arrived at by the police, after due investigation, that the vehicle, which is the crime vehicle in this case, was involved in the accident. The claim, being under beneficial legislation, has to be

approached with a liberal view and when, there is no serious contest raised by the respondents, there need not be any reason for the court to disbelieve the charge sheet, which is filed after the investigation. In view of the above, it can be held that both the respondents are jointly and severally liable for the claim amount.

5. As regards the compensation, the counsel for the appellants contends that the court below took the income of the deceased as only Rs.1,000/- per month, which is very meagre. Now the law is well settled that even a Coolie would be earning Rs.4,500/- per month, by the ruling reported in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*[1]. The evidence of the claimants is that the deceased was earning Rs.3,000/- per month, which need not be disbelieved, in the light of the above ruling.

6. The Supreme Court in *NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI* [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] held that the future hike in the income of the deceased also has to be considered. The age of the deceased, being 30 years, the future hike, according to the above ruling, would be 40%. Then the monthly income would come to Rs.4,200/-. Out of the said income, 1/3rd should be deducted then Rs.2,800/- would be loss of future monthly income to the petitioners and Rs.33,600/- would be loss of annual income. The multiplier relevant for the age of the

[1] 2011 ACJ 2436

deceased, as per the ruling of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2], is '16'. Hence, Rs.33,600/- X 16 = Rs.5,37,600/- is awarded to the claimants towards loss of future income.

8. Apart from the above, following *Pranay Sethi's* case (supra), Rs.40,000/- is awarded to the first claimant under the head loss of Consortium, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.5,37,600/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.6,07,600/- with proportionate costs. Though the compensation granted exceeds the claim amount, now the law is well settled by virtue of the decision of the Supreme Court in *Rajesh v. Rajbir Singh*[3], wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in *Adam Indur Mutemma v. Rathod Peddita*[4] held that the compensation amount can exceed the claimed amount, subject to payment of court-fee.

9. Since the court below dismissed the OP, it did not make any apportionment among the claimants, who are the wife and the children. Hence, the apportionment among them shall be as follows:

The first claimant-wife would be entitled to Rs.3,07,600/- and claimants 2 and 3 are entitled to Rs.1,50,000/- each.

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[2] (2009) 6 SCC 121
[3] (2013) 9 SCC 54
[4] 2015(4) ALD 585 (LB)

The court below also awarded 8% interest and the same shall be the interest on the awarded amount from the date of petition till the date of realisation. The petitioners are permitted to withdraw their respective shares after the deposit by the respondents.

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

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T. RAJANI, J

December 19, 2017
LMV