

SMT JUSTICE T. RAJANI

MACMA Nos.837 of 2011 and 1213 of 2012

COMMON JUDGMENT:

MACMA No.837 of 2011:

This appeal is preferred by the appellants, who are the respondents before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.1338 of 2009 dated 16.07.2010 on the grounds that the Court below failed to consider the aspect of contributory negligence on the part of the deceased and also awarded excessive compensation by accepting the income of the deceased to be Rs.7,000/-, without there being any proof. (In fact the earning was taken only as Rs.4,500/-.

2. Heard both the counsel.

3. As regards negligence, the Court below has considered the evidence in the right perspective. There was evidence of eye-witness in the form of P.W.2, who spoke about the manner of accident and who categorically stated that the accident occurred due to the negligence of the driver of the APSRTC bus. In the light of the evidence of an independent witness, the evidence of R.W.1, the driver of the APSRTC, does not gain preference and the evidence of P.W.2 stand on a better footing of credibility. Hence, no fault can be found with the Court below in concluding that the accident occurred due to the negligence of the driver of the APSRTC bus.

The civil miscellaneous appeal is dismissed.

MACMA.No.1213 of 2012:

4. This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.1338 of 2009 dated 16.07.2010 on the ground that the compensation awarded by the Court below is not adequate.

5. The Court below took the income of the deceased as Rs.4,500/-, without believing the salary certificate, Ex.A6, which shows the salary of the deceased as Rs.6,480/-.

6. The counsel for the respondent contends that in the absence of any evidence proving the salary certificate, the income has to be taken as Rs.3,000/- and not Rs.4,500/-.

7. The counsel for the appellant now relies on a decision of the Supreme Court in RAMACHANDRAPPA v. MANGAER, ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.¹ wherein it was held that Rs.4,500/- can be taken as the income of a coolie in the absence of any evidence. Hence, following the aforesaid decision, no error can be found on the part of the Court below in taking the income of the deceased as Rs.4,500/-, he being a gardener.

8. The counsel for the appellants also relies on a latest decision of 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] to contend that the future hike in the income is also to be

¹ 2011 ACJ 2436

considered and the deceased, being 38 years, the future hike has to be 40% as per the said decision and the standardized income would come to Rs.6,300/-. The counsel also relied on a decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION² to support his contention that deduction towards personal expenditure has to be 1/4 as the claimants are four in number.

9. Hence, taking the said future hike into consideration and personal deduction at 1/4, the monthly loss of comes to Rs.4,500/- + (Rs.4,500/- x 40% = Rs.1,800/-) = (Rs.6,300/- x 1/4 = Rs.1,575/-) i.e. Rs.6,300/- - Rs.1,575/- = Rs.4,725/- and the annual loss of income comes to Rs.4,725/- x 12 = Rs.56,700/-. The multiplier relevant for the age of the claimant is '15' as per the decision of the Supreme Court in SARLA VERMA's case (2 supra). Hence, the loss of future income to the claimants would come to Rs.56,700/- x 15 = Rs.8,50,500/-. Apart from the above, Rs.40,000/- is awarded to the first claimant under the head loss of consortium, Rs.15,000/- is awarded under the head loss of estate and Rs.15,000/- is awarded under the head funeral expenses as per the decision in PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of Rs.8,50,500/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.9,20,500/-.

10. Hence, the award of the Court below is modified as indicated above with proportionate costs. The apportionment of compensation

² (2009) 6 SCC 121

shall be made as per the terms of the apportionment made by the Court below. 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.

In the result, MACMA.No.837 of 2011 is dismissed and MACMA.No.1231 of 2012 is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 12, 2017
DSK

T. RAJANI, J

