SMT JUSTICE T. RAJANI

MACMA No.243 of 2011

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the Principal District Judge, Nalgonda in OP.No.223 of 2005 dated 06.09.2007 on the grounds that the Court below did not consider Motor Vehicle Inspector's report, which evidences that there was valid driving licence with the driver of the crime vehicle as on the date of the accident and the Court below also erred in taking the earnings of the deceased, though the deceased was working as mason and stated to be earning Rs.5,000/-.

2. Heard both sides.

3. A perusal of the judgment of the Court below would show that the Court below, considering that the first respondent did not choose to adduce evidence with regard to the driving licence of the crime vehicle, exonerated the second respondent from liability.

4. The counsel for the appellants submits that the Motor Vehicle Inspector's report, which was marked as Ex.A5, shows that there was subsisting driving licence as on the date of accident, which is valid up 16.07.2005 and the date of accident is 13.02.2005.

5. The Court below ought to have taken pains to peruse the MVI's report, to understand that there was driving licence subsisting as on the date of the accident. Moreover, it placed burden on the first respondent to adduce evidence, while there is no serious contest made

by the second respondent. Except a formal denial in the counter, the second respondent did not choose to adduce any evidence with regard to the absence of driving licence on the date of the accident. Hence, in such circumstance, the judgment to the extent of dismissing the claim against the second respondent cannot be sustained. Hence, respondents 1 and 2 shall be jointly and severally liable to pay compensation to the claimants.

6. The counsel for the claimants also assails the judgment of the Court below on the ground of inadequacy of compensation. He contends that the deceased, being a mason, his income can be taken as Rs.4,500/- per month as per the 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. The counsel also relied on a decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] to support his contention that deduction towards personal expenditure has to be 1/4 as the claimants are five in number.

7. Hence, after deducting the personal expenses at 1/4, the monthly income of the deceased comes to Rs.4,500/- x 1/4 = Rs.3,375/- and the annual income comes to Rs.3,375/- x 12 = Rs.40,500/-. The multiplier relevant for the age of the claimant, which is 42 years, is '14' as per the decision of the Supreme Court in SARLA VERMA's case (2 supra). Hence, the loss of future income to

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[1] 2011 ACJ 2436
[2] (2009) 6 SCC 121

the claimants would come to Rs.40,500/- x 14 = Rs.5,67,000/-. The claim of the claimants is only for Rs.5,00,000/-. 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 in ADAM INDUR MUTEMMA v. RATHOD PEDDITA[4] 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 apportionment of compensation shall be made in 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. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 11, 2017
DSK

[3] (2013) 9 SCC 54
[4] 2015(4) ALD 585 (LB)