SMT JUSTICE T. RAJANI

MACMA.Nos.1402 and 1446 of 2012

COMMON JUDGMENT:

MACMA.No.1402 of 2012 is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the II Additional Chief Judge, City Civil Court, Hyderabad in OP.No.1093 of 2009 dated 12.08.2011 on the ground of excessiveness of compensation, while MACMA.No.1446 of 2012 is preferred by the appellants, who are the claimants before the Court below, assailing the aforesaid judgment on the ground of inadequacy of compensation.

2. None appears for the appellant in MACMA.No.1402 of 2012. Hence, the appeal is dismissed.

3. Heard the counsel for appellants/claimants in MACMA.No.1446 of 2012. The respondent's counsel did not file his vakalat in MACMA.No.1446 of 2012. Hence, it can be treated as *ex parte*.

4. The counsel for the claimants would contend that the Court below did not consider the salary certificate, filed by the claimants, showing the salary of the deceased as Rs.7,500/- per month.

5. A perusal of the judgment would show that the Court declined to accept the salary certificate, considering that no supporting records are produced in support of the evidence of P.W.3, who spoke about the salary certificate. As regards the income of Rs.4,500/-, which the

deceased was, allegedly, earning as sales representative, it cannot be considered, as no evidence was adduced in that regard.

6. The counsel for the claimants relied on a decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.[1] wherein the income of the vegetable vendor was taken as Rs.6,500/- per month. Hence, the same can be assumed as the income of deceased, who is a superviser. The counsel also relied 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 considered and the deceased, being 39 years, the future hike has to be 40% as per the said decision.

7. If the future hike at 40% is added, the monthly income would come to Rs.6,500/- + (Rs.6,500/- x 40% = Rs.2,600/-) = Rs.9,100/-. Out of the said amount, 1/4th has to be deducted towards his personal expenditure as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2]. Hence, after deducting 1/4th, the loss of monthly income would come to Rs.9,100/- - (Rs.9,100/- x 1/4th = 2,275/-) = Rs.6,825/- and the loss of annual income would come to Rs.6,825/- x 12 = Rs.81,900/-. The age of the deceased, being 39 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (2 supra) is '15'. Hence, the loss of future income to the claimants would come to Rs.81,900 x 15 = Rs.12,28,500/-. Apart from the above, following the

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[1] AIR 2014 SC 1052
[2] (2009) 6 SCC 121

decision of the Supreme Court in PRANAY SETHI's case (supra) Rs.40,000/- is awarded to the first claimant towards 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.12,28,500/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.12,98,500/-. Though the compensation awarded exceeds the claim, 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 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 claimants shall pay the differential court-fee. The apportionment of compensation shall be made in the same proportion as 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.

9. The counsel for the claimants represents that claimant No.4 died during the pendency of the appeal and that the other claimants are the only legal representatives of the fourth claimant. Hence, the compensation that is apportioned to the fourth claimant shall be apportioned to the other claimants.

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

In the result, MACMA.No.1402 of 2012 is dismissed and MACMA.No.1446 of 2012 is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 22, 2017
DSK