

SMT. JUSTICE T. RAJANI

MA CMA No.5370 of 2008
&
Cross Objections (SR) No.4403 of 2009

COMMON JUDGMENT:

MA CMA No.5370 of 2008 is filed by the appellant, who is the 2nd respondent-insurer in the lower court, assailing the decree and award dated 20.11.1992 in OP No.543 of 1989 passed by the Chairman, MACT cum Additional District Judge, Mahabubnagar, on the ground that the alleged cover note was not issued by the appellant and there is no coverage to the vehicle as on the date of the accident and that the lower court ought to have dismissed the claim.

2. But the appellant-insurer does not appear before this court on 23.02.2017 and the matter was posted to 10.03.2017. On 10.03.2017, none appears for the appellant and the learned counsel for the respondents wanted to enter arguments saying that he has filed Cross-objections, but as the cross-objections were not listed along with the case, the matter was adjourned to today along with the cross-objections. Even today also, learned counsel for the appellant does not appear. Hence, MA CMA No.5370 of 2008 is dismissed for non-prosecution. Miscellaneous petitions, pending if any, in the appeal, shall stand dismissed in consequence.

3. Cross-objections (SR) No.4403 of 2009 are filed by the claimants on the ground that the court below awarded only Rs.53,000/- as compensation, in spite of claim of Rs.1,00,000/-

and there was evidence of PW.1 with regard to income of the deceased that the deceased was earning Rs.3000/- to Rs.4000/- per month and the same was not disputed. But the lower court took the income of the deceased at Rs.350/- per month. The 1st respondent in the Cross-objections, who is the appellant in MA CMA No.5370 of 2008, as already observed, does not appear.

4. Learned counsel for the Cross-objectors contended that with regard to income of the deceased, the approach adopted by the lower court is far from the principles of natural justice as the lower court took only Rs.350/- per month as income of the deceased.

5. In the absence of any evidence with regard to the income, the usual course, the courts adopt to take the income of a person at Rs.3000/- per month. In this case, except the oral evidence of PWs.1 and 2, there is no other evidence proving the income of the deceased. Though the avocation stated by PWs.1 and 2 need not be doubted, in the absence of any definite material about the income of the deceased, following the usual course, the income of the deceased is fixed at Rs.3000/- per month and after deducting 1/3rd towards his personal expenses, the actual loss of earnings on account of the death of the deceased to the family comes to Rs.2000/- per month and Rs.24,000/- per annum.

6. The age of the deceased was 50 years at the time of the accident, which is not disputed. As per the ruling of the Apex Court in '*Sarla Verma & others vs. Delhi Transport Corporation &*

another¹, the relevant multiplier for a person aged 50 years is '13'. Thus, the actual loss of earnings comes to Rs.24,000/- x 13 = Rs.3,12,000/-.

7. Though the claim of the Cross-Objectors, as already stated, is only Rs.1,00,000/-, learned counsel for the Cross-objectors submits that the courts can award compensation more than what is claimed by the claimants. In support on his contention, he relied on a decision in '*Branch Manager, Oriental Insurance Co. Ltd., vs. Nagoorammal & others*²', wherein the Hon'ble Madras High Court, Madurai Bench, relied on a ruling of the apex Court in '*Nagappa vs. Gurudayal Singh*³', wherein the apex court held that 'the court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections'.

8. In view of the rulings of the apex court, the cross-objectors can also claim enhanced compensation. Learned counsel for the Cross-objectors however submits that he does not press for enhancement of the amounts granted under the other heads.

¹ 2009 ACJ 1298 = (2009) 6 SCC 121

² 2016 ACJ 2870

³ 2003 ACJ 12 (SC)

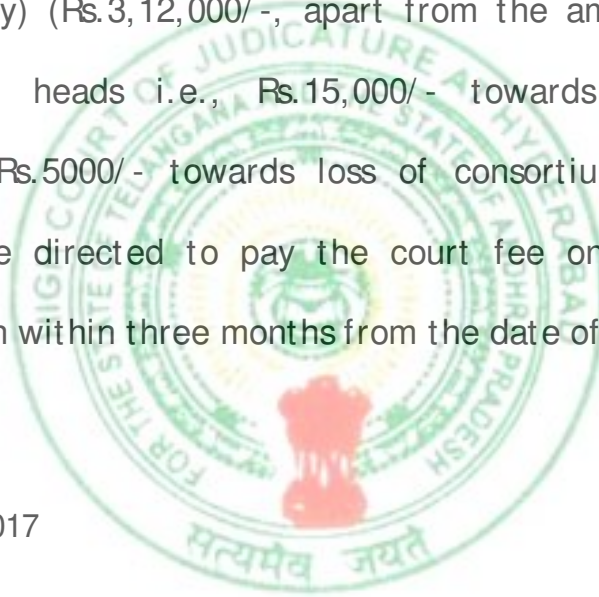
9. The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the court below.

10. The apportionment between the claimants shall be in accordance with the apportionment made by the court below.

11. In the result, the cross-objections are partly allowed with proportionate costs and the claimants are entitled for a total compensation of Rs.3,32,000/- (Rupees three lakhs, thirty two thousand only) (Rs.3,12,000/-, apart from the amounts awarded under other heads i.e., Rs.15,000/- towards non-pecuniary damages + Rs.5000/- towards loss of consortium). The cross-objectors are directed to pay the court fee on the enhanced compensation within three months from the date of this judgment.

Date: 17.03.2017
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