

SMT JUSTICE T. RAJANI

MACMA.Nos.202 and 236 of 2008

COMMON JUDGMENT:

The appeals are preferred by the appellants, who are the claimants before the Court below, assailing the common judgment of the District Judge, Nellore, in OP.Nos.371 and 372 of 2005 dated 30.10.2007.

2. Heard both sides.

MACMA.No.202 of 2008:

3. This appeal is preferred on the grounds that the Court below did not award adequate compensation, it awarded only Rs.20,000/- as against the claim of Rs.1,00,000/-; it failed to consider the medical evidence by examining P.W.3, who treated the claimant.

4. The evidence of P.W.3 becomes relevant for awarding compensation to the claimant, as he spoke about the treatment given to the claimant. According to him, the claimant was admitted in his hospital on 02.01.2005 for colles fracture (fracture at the wrist); she was treated by POP and was advised physiotherapy and review after four weeks. According to him, there is disability of 7% at that time and he stated that there may be mild to moderate pain, while performing functions with that wrist.

5. From the evidence of P.W.3, it can be understood that the treatment was only conservative and there was no mal-union or non-union of the fracture. When a fracture occurs at the wrist, it is possible that the movements would get restricted temporarily,

due the POP being applied over the wrist to the palm. The evidence also shows that 7% disability arrived by him was at the time when he examined her. He did not say that it is a permanent disability and the difficulty in performing functions with the wrist, as stated by him, also can be related only to that period. Hence, it cannot be said that the disability is permanent disability.

6. The Court below by considering the facts of the case awarded Rs.20,000/- i.e. Rs.15,000/- towards pain and suffering and Rs.5,000/- towards medical expenses. There is no evidence with regard to the medical expenses, hence, the award of Rs.5,000/- need not be considered as inadequate. But, however, the Court below failed to award compensation under the heads of transportation, loss of earning during the period of treatment and towards loss of temporary amenities of life. Towards transportation Rs.5,000/- can be awarded as the injury is only on the wrist. As regards loss of income, the evidence of the claimant as P.W.1 is that she was assisting her husband in the business. The value of her services can be estimated as Rs.3,000/- per month and 1 ½ months can be taken as the period of treatment, rest and recovery and thus, Rs.4,500/- need to be awarded under the said head. Another sum of Rs.1,000/- can be awarded towards loss of temporary amenities of life. Hence, in all, the award of the Court below stands enhanced by Rs.10,500/-, thereby, the total award comes to Rs.30,500/- with proportionate costs. The award shall relate back to the date of decree and the enhanced 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.

MACMA.No.236 of 2008:

7. This appeal is preferred on the grounds that the Court below ought to have considered that on account of illiteracy and ignorance, the appellant could not get PME of the deceased done and it failed to consider the medical evidence adduced through P.Ws.2 and 3.

8. The facts of the case are that the deceased, in this case, did not die an instantaneous death, but died after six months of the accident. Whether his death has any nexus to the injuries sustained by him in the accident or not is the question that needs to be first decided, as a pre-condition for awarding compensation to the claimants.

9. The evidence of P.Ws.2 and 3 becomes relevant in that regard. P.W.3 is the Doctor, who treated the deceased immediately after the accident. According to his evidence, the deceased was admitted in the hospital on 02.01.2005 for compound fracture shaft of femur; he was treated by surgery i.e. external fixator of femur, on 21.02.2005; he was known diabetic and he was discharged on 05.04.2005 with an advice of review after four weeks. He was readmitted on 13.05.2005 and was treated medically both for the fracture and diabetes and discharged on 18.05.2005 with an advice to come for regular check-up for further follow up. He further opined that there may be a chance of complication of wound by infection. In the cross-examination, it was elicited that he cannot establish further future complications with the help of the case sheet available with him.

10. P.W.2 is the Doctor, who treated the deceased for the complications that arose out of the injuries. According to his evidence, the deceased came to his hospital on 09.06.2005 with complaints of vomiting, fever with body pains, swelling of the foot since four days. On examination of the patient, he came to the conclusion that it was a renal failure with septicemic shock. At about 11.30 AM the patient complained of severe breathlessness along with vomiting and he was given oxygen inhalation. Suddenly, his oxygen saturation became less and was shifted to ICU. Then, he was referred to another doctor but by the time the physician came, the patient's condition got completely deteriorated and he expired at about 11.10 PM. He further stated that at the time of admission, he was in shock due to septicemia and the cause may be previous injuries.

11. The counsel for the respondent argues that the opinion expressed by P.Ws.2 and 3 would not lead to the conclusion that the death of the deceased was due to the injuries sustained in the accident. He argues that by virtue of PME alone one can come to a definite conclusion and that the lapse of the claimants to get the PME done has to be considered in favour of his contention that the death did not occur due to the injuries sustained in the accident.

12. But, unfortunately, the said argument does not find favour with this Court. The claimants cannot be expected to be conversant with all the procedures of law. When there is evidence, sufficient enough, to arrive at a conclusion that there is a possibility of the injuries leading to the death of the deceased, the claim under a beneficial legislation should not be allowed to get defeated, due to technical

lapses on the part of innocent victims. The evidence is ample on the aspect of septicemia, which can only be a consequence of the injuries. The contention of the respondent's counsel that the death might be due to subsequent injuries sustained by the deceased, is absolutely incomprehensible and is only an argument in the air. There is absolutely no doubt, thrown on the case of the claimants that the deceased died subsequent to his sustaining injuries in the accident. Hence, such an assumption would not meet the theme of the beneficial legislation. Hence, it can be concluded without any demur that the injuries sustained by the deceased in the accident are the cause of his death.

13. Having been lead to the said conclusion, now the compensation that has to be assessed has to be based on his monthly income. It is the admitted case of the claimants that no evidence with regard to the income of the deceased was adduced though he was doing hotel business. Hence, in the absence of any such evidence, Rs.3,000/- has to be taken as his monthly income. After deducting 1/3rd toward the personal expenditure of the deceased, Rs.2,000/- would be the loss of monthly income and Rs.24,000/- would be the loss of annual income. The age of the deceased is sated to be 46 years and the same is not put to severe test. Hence, the relevant multiplier for his age, as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹, is '13'. The loss of future income to the claimants would come to Rs.24,000/- x 13 = Rs.3,12,000/-. Apart from the above, Rs.40,000/- is awarded towards loss of

¹(2009) 6 SCC 121

consortium to the first claimant, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses by following the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017). The claimants would be entitled to total compensation of Rs.3,12,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.3,82,000/-. This compensation is in addition to Rs.25,000/-, which was awarded by the Court below for the expenditure incurred for the treatment of the deceased. Hence, the claimants are entitled to total compensation of Rs.3,82,000/- + Rs.25,000/- = Rs.4,07,000/- with proportionate costs.

14. Hence, in all, the award of the Court below stands modified as indicated above, with proportionate costs. The award shall relate back to the date of decree and the compensation awarded shall carry interest at the rate specified and from the date indicated by the Court below.

The civil miscellaneous appeal is allowed in part.

In the result, MACMA.Nos.202 and 236 of 2008 are allowed in part to the extent indicated above. As a sequel, the miscellaneous applications, if any, shall stand closed.

December 6, 2017
DSK

T. RAJANI, J