SMT JUSTICE T.RAJANI

M.A.C.M.A. Nos.376 & 1579 OF 2013

COMMON JUDGMENT:

M.A.C.M.A. No.376 of 2013 is filed by the appellant, who is the 2nd respondent/insurer, assailing the judgment of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad (for short, 'the Court below') in O.P. No.1170 of 2003 dated 06.09.2005, on the ground that the amount of compensation awarded by the Court below is excessive; while M.A.C.M.A. No.1579 of 2013 is filed by the appellants, who are the claimants, assailing the same judgment, on the ground that the Court below did not award adequate compensation.

2. Both these Appeals can be disposed of by way of common judgment.

3. The parties hereinafter would be referred to as the claimants and 2nd respondent, for the sake of convenience.

4. Heard the learned counsel for the appellants/claimants and the learned standing counsel for the 2nd respondent/insurer.

5. The counsel for the claimants takes this Court through the judgment of the lower Court; wherein, the Court below, by accepting the salary mentioned in Ex.A-6, which the deceased was drawing by working as Attender in Mahatma Gandhi Institute of Technology, Gandipet, Hyderabad, deducted Rs.1,000/- which included contribution towards Provident Fund and Professional Tax. Counsel now assails the said approach of the Court below contending that the deduction should be only

of the Professional Tax, as, Provident Fund is only a saving of the deceased. The law is well settled on the said aspect. Hence, Rs.5,119/- shall be the income of the deceased. Learned counsel relied on a judgment of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi*** [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017], to contend that 50% has to be the future hike of the salary of the deceased, as he is a permanent employee, aged 38 years. By calculating the income as such, it would come to Rs.7,678/-. The claimants are 6 in number, as per the ruling of the Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation***[1], deduction towards personal expenses has to be 1/4th and if 1/4th amount from out of Rs.7,678/- is deducted, Rs.5,759/- would be the loss of monthly income and Rs.69,108/- would be the loss of annual income of the deceased. In view of the ruling laid down by the Apex Court in ***Sarla Verma's*** case (1 *supra*), the multiplier applicable to the age group of deceased is '15' and if the same is multiplied with Rs.69,108/-, it would come to Rs.10,36,620/-, which is awarded towards loss of future income to the claimants. Apart from the above, following ***Pranay Sethi's*** case (*supra*), Rs.40,000/- is awarded to the 1st claimant towards loss of consortium, 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.10,36,620/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.11,06,620/-. Though the compensation granted exceeds the claim amount, now the law is well settled by virtue of the decision of the Apex Court in ***Rajesh Vs. Rajbir Singh***[2], wherein it was held that the compensation has to be just and it can exceed the claimed amount. This

[1] (2009) 6 SCC 121
[2] (2013) 9 SCC 54

Court also in ***Adam Indur Mutemma Vs. Rathod Peddita***[3] held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

6. Hence, M.A.C.M.A. No.1579 of 2013 filed by the appellants/claimants is allowed. Accordingly, the award of the Court below is modified as indicated above, with proportionate costs. The claimants shall pay the differential court-fee. 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 enhanced compensation shall be apportioned among the claimants in the same proportion as per the award of the Court below. Learned counsel for the appellants/claimants filed a memo stating that 6th claimant died on 09.10.2005 and his legal representatives are none other than claimants 1 to 5, who are already on record. Hence, the share amount of the 6th claimant be divided into 5 equal shares and be apportioned equally among the claimants 1 to 5.

Consequently, M.A.C.M.A. No.376 of 2013 preferred by the appellant/2nd respondent/insurer is dismissed. As a sequel, the miscellaneous applications, if any pending, in these Appeals shall stand closed. No order as to costs.

T.RAJANI, J

Date: 22.12.2017.
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[3] 2015 (4) ALD 585 (LB)

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Date. 22.12.2017

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