

SMT JUSTICE T. RAJANI

MACMA No.4017 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the I Additional District Judge, Nalgonda in OP.No.661 of 2006 dated 25.06.2008 on the grounds that the Court below erred in taking the monthly income of the deceased as Rs.3,000/-, though there was a salary certificate, showing the income as Rs.5,000/- per month; it ought to have believed the evidence of employer P.W.2; hence, the award, which did not consider all the said aspects, is liable to be set aside.

2. Heard both sides.

3. The award of the Court below shows that the income of the deceased was taken as Rs.3,000/- per month, as it did not consider Ex.A8, which is the salary certificate, showing Rs.5,600/- as the income of the deceased, on the ground that no authenticated record was produced to show that the income was Rs.5,600/-. The approach of the Court below need not be found fault with, since there can be no other option except to adopt such approach, when there is no support for the oral evidence, testifying about the salary. The counsel for the appellant, however, now relies on a decision of the Supreme Court in RAMACHANDRAPPA v. MANAGER, 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.

¹ 2011 ACJ 2436

Hence, following the aforesaid decision, Rs.4,500/- can be taken as the income of the claimant in this case also.

4. Hence, if the income of the deceased is taken as Rs.4,500/- per month, the future hike in income as per the 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] at 40% has to be added. Then, the monthly income would come to Rs.6,300/-, out of which $\frac{1}{4}$ th has to be deducted towards personal expenditure, as the number of claimants are five in number, as the said principle is laid by the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION². Then the loss of monthly income would come to Rs.4,725/- and loss of annual income would come to Rs.4,725/- x 12 = Rs.56,700/-. The age of the deceased, being 40 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (2 supra) is '14'. Hence, the loss of future income to the claimants would come to Rs.56,700 x 14 = Rs.7,93,800/-. Apart from the above, Rs.40,000/- is awarded towards loss of consortium to the first claimant, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses, as per the decision is PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of Rs.7,93,800/- + 40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.8,63,800/-.

² (2009) 6 SCC 121

5. The counsel for the appellants further submits that the deceased was taken to hospital after the accident and hence, the probable expenditure for his treatment is also required to be awarded.

6. The facts of the case would show that he was taken to Kamineni Hospital for treatment. Hence, considering the same, another Rs.5,000/- is awarded towards medical and incidental expenses, which the deceased might have incurred. In all, the claimants are entitled to total compensation of Rs.8,68,800/-, which is rounded off to 8,69,000/-. Now the law is well settled by virtue of the decision of the Supreme Court in RAJESH v. RAJBIR SINGH³, 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 PEDDITA⁴ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

7. 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 terms of the apportionment made by the Court below. 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. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 15, 2017/DSK

³ (2013) 9 SCC 54

⁴ 2015(4) ALD 585 (LB)