SMT JUSTICE T. RAJANI

MA CMA No.2006 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant in the Court below, assailing the judgment of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad in O.P.No.1159 of 2008, dated 13.03.2011 on the grounds that the court below did not award adequate compensation and did not consider the documentary and oral evidence in correct perspective and that the income taken by the Court below is also not adequate.

2. Heard both the counsel.

3. A perusal of the judgment of the Court below shows that it took Rs.3,000/- as the monthly income of the claimant by considering that there was no supporting evidence for the evidence of P.W.1, who is the claimant, who stated that he is earning Rs.6,000/- per month. The said approach of the Court below does not suffer from any irregularity, as there is no evidence with regard to the income.

4. The counsel for the appellant now relies on a decision of the Supreme Court reported in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.,*[1] wherein the Supreme Court took Rs.4,500/- per month as the income of a Coolie, who was aged 35 years.

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[1] 2011 ACJ 2436

5. The age of the claimant in this case is 43 years. However, though there is variance in the age of the injured in the case considered by the Supreme Court and the injured in this case, it can be accepted that even a Coolie aged 43 years would be able to earn Rs.4,500/- per month.

6. The counsel for the appellant relies on the decision of the Supreme Court in *National Insurance Company Ltd., vs. Pranay Sethi* in Special Leave Petition (Civil) No.25590 of 2014 in support of his contention that 30% should be the future hike of the income of an employed person.

7. On considering the said future hike, the income of the claimant would come to Rs.5,850/-. The disability, as stated by the doctors at 60%, is not disputed and hence, 60% of the monthly income would come to Rs.3,510/- and Rs.42,120/- would be the income per annum. The multiplier relevant for the age of the claimant, who is aged 43 years, is 15. Hence, the loss of future income to the claimants would come to Rs.6,31,800/- (Rs.42,120/- X 15).

8. The counsel relies on a ruling of the apex court in *Sanjay Kumar vs. Ashok Kumar*[2] to draw support to his contention that Rs.1,00,000/- should be awarded towards loss of future amenities of life and Rs.1,50,000/- towards pain and suffering and mental agony. The apex court awarded the said amounts towards the said heads and the case dealt with by the apex court is also of an amputation of leg.

[2] (2014)5 SCC 330

9. Hence, Rs.1,00,000/- is awarded towards loss of future amenities of life and Rs.1,50,000/- towards pain and suffering. The above amounts shall be substituted for the amounts that were awarded by the court below under the said heads. In all, the claimants are entitled to Rs.6,31,800/- (loss of future income) + Rs.1,00,000/- (loss of future amenities of life) + Rs.1,50,000/- (pain and suffering) = Rs.8,81,800/-. Though the compensation awarded exceeds the claimed amount, the law is now 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 and the decision of this Court in *Adam Indur Mutemma vs. Rathod Peddita*[4], wherein it was held that the compensation amount can exceed the claimed amount subject to payment of court-fee.

10. Hence, the claimant is entitled to total compensation of Rs.8,81,800/ with proportionate costs. The appellant/claimant shall pay the differential court fee on the compensation amount that exceeds the claimed amount before the court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

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

Accordingly, the MACMA is partly allowed with proportionate costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 5, 2017
LMV