SMT JUSTICE T.RAJANI

M.A.C.M.A.NO.990 OF 2008

JUDGMENT:

This appeal is preferred by the appellant, who is respondent No.2 before the Court below, assailing the award of the District Judge, Warangal in O.P.No.1523 of 2006 dated 18.12.2007 on several grounds, including the aspects of negligence and the quantum.

Heard the counsel for the appellant. Counsel for the respondents does not appear. Counsel for the appellant did not press upon the other grounds raised in the appeal but he argued on two grounds i.e. the negligence aspect and the quantum.

Counsel contends that admittedly the scooterist was going with two pillion riders and as per the ruling of this High Court in **Cholamandalam M.S. General Insurance Co. Ltd. V. Mamidisetti Satish and others**[1], the fact of three people going on a two-wheeler itself has to be considered as amounting to contributory negligence. The High Court fixed 25% as contributory negligence on the part of the scooterist. But there is a distinction between the facts dealt with by the High Court and this case. In the case dealt with by the High Court, it was a head on collision whereas in the present case it is a hit from behind. Hence, this case stands on a different footing. There is absolutely no evidence adduced by the respondents to say that triple riding of the vehicle has contributed to the accident. When it is a case of hit from behind, it cannot be said that triple riding has contributed to the accident. Hence, this Court is not inclined to accept the

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[1] **2016 ACJ 1865**

contention of the appellant's counsel with regard to contributory negligence.

The second contention is with regard to the loss of future income arrived at by the Court below. The approach adopted by the Court below, in arriving at the compensation, without deducting any amount towards personal expenditure of the deceased, as argued, is unsustainable. A perusal of the award of the Court below shows that it has taken the income of the deceased as Rs.3,000/- per month and it states that after deducting his personal expenditure, the annual income comes to Rs.35,000/- and later it goes on to multiply the annual income of Rs.36,000/- with the suitable multiplier, which on the face of it is not sustainable. There is no scientific method adopted by the Court below for deducting the personal expenses of the deceased. As per the law that is settled by now, 1/3rd has to be deducted towards the personal expenditure of the deceased in case of a married person. The counsel submits that in this case the deceased was an unmarried person and hence, the deduction must be 50% as per the decision of the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation**[2]. Hence, Rs.1,500/- would be the loss of monthly income and Rs.18,000/- would be the loss of annual income. When it is multiplied by multiplier '13' which is the relevant to the age of the deceased, it comes to Rs.2,34,000/-. Hence, the above amount is substituted for Rs.4,88,000/-, which was awarded by the Court below. To the extent indicated above, the award of the Court below stands modified. Rest of the award stands in tact.

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[2] (2009)6 SCC 121

Accordingly, the appeal is allowed in part. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(T.RAJANI, J)

2nd November 2017
RRB