

SMT JUSTICE T.RAJANI

M.A.C.M.A. No.1775 OF 2011

JUDGMENT:

This Appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Court below') in O.P. No.1400 of 2007 dated 11.05.2009, on the grounds that the Court below did not appreciate the aspect of negligence in proper perspective; the Court below though held that the accident occurred due to the composite negligence of both the drivers, apportioned the compensation between the respondents 1 and 2, by wrongly apportioning the negligence to the extent of half on each driver; the Court below also did not award adequate compensation; it took the multiplier as specified by this Court in ***Bhagavan Das Vs. Mohd. Arif***¹ instead of following the II Schedule of the Motor Vehicles Act, 1988 or the relevant multiplier specified by the Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation***²; it also took the income of the deceased only as Rs.3,000/- p.m. though he was proved to be working as a mason.

2. The counsel, in support of his argument, that in case of composite negligence the option for the victims would be available to claim compensation against any one of the tort-feasors, relied on the ruling of the Apex Court in ***Khenyei Vs. New India Assurance Company Limited and others***³; wherein, the Apex Court held that the claimants are entitled to claim compensation from both or any one of the joint tort-feasors. Hence, in view of the above law laid down by the Apex Court, the approach of the Court below in apportioning 50% of the negligence

¹ 1987 (2) ALT 137

² (2009) 6 SCC 121

³ 2015 ACJ 1441

between the two vehicles involved in the accident and depriving the claimants of the 50% of the compensation which is awarded against the two vehicles cannot be sustained. Hence, respondents 1 and 2 shall be jointly and severally liable for the entire award amount.

3. As regards the entitlement of the compensation, learned counsel contends that at least Rs.5,000/- should be the monthly income that has to be taken for the deceased, as he is working as a mason. He relies on a decision of the Apex Court in **Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited**⁴ wherein Rs.5,000/- was taken as the monthly income of a cleaner. Hence, the monthly income of the deceased is taken as Rs.5,000/-, and in view of the ruling 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] considering the age of the deceased which is 44 years, 25% has to be taken as the future hike in his income. As per the above ruling, the monthly income of the deceased would come to Rs.6,250/-. The claimants being 4 in number, 1/4th should be deducted towards the personal expenses of the deceased, as per the ruling of the Apex Court in **Sarla Verma's** case (2 *supra*). After deducting 1/4th from out of Rs.6,250/-, Rs.4,688/- would be the loss of monthly income and Rs.56,256/- would be the loss of annual income of the deceased. The multiplier relevant for the age group of the deceased as per **Sarla Verma's** case (2 *supra*) is '14' and if Rs.56,256/- is multiplied with the relevant multiplier '14', it would come to Rs.7,87,584/-, the same 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 first claimant under the head loss of consortium, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards

⁴ AIR 2014 SC 1052

funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.7,87,584/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.8,57,584/- which is rounded off to Rs.8,58,000/-. 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**⁵, wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in **Adam Indur Mutemma Vs. Rathod Peddita**⁶ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

4. Hence, 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.

Accordingly, with the above direction, the civil miscellaneous appeal is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T.RAJANI, J

Date: 22.12.2017.
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⁵ (2013) 9 SCC 54

⁶ 2015 (4) ALD 585 (LB)

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