SMT JUSTICE T. RAJANI

MACMA.No.798 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 I Metropolitan Sessions Judge cum XV Additional Chief Judge, Hyderabad in OP.No.959 of 2010 dated 29.11.2011 on the grounds that the Court below erred in fixing contributory negligence on the rider of the motor cycle at 50% and the income was also not properly assessed.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that by considering the fact that there was triple riding on the motor cycle, attributed 50% negligence and deducted the said 50% from the compensation.

4. But it appears that the Court below failed to appreciate the difference between the case of composite negligence and contributory negligence. It is the not the case of the respondents that the deceased was the person, who was riding the motor cycle, in which circumstance alone, it can be taken as contributory negligence. In a case of composite negligence, the victims have right to claim the compensation from any of the tortfeasors. Hence, the approach of the Court below in depriving the claimants of 50% of the compensation, on the ground of contributory negligence cannot be sustained.

5. The income of the deceased was taken as Rs.4,000/- per month by the Court below, by declining to accept Ex.A6, which reflected the salary of the deceased as Rs.6,000/- per month. It also did not take into consideration the evidence of P.W.3, who is the employer of the deceased, as he did not produce any account books. However, the law is now settled by the Supreme Court SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.[1] wherein Rs.5,000/- was taken as the monthly income of a cleaner. In this case, the deceased is stated to be a salesman and his income can be taken as Rs.5,000/- per month. Following 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] 40% of the future hike in income is also to be considered as the deceased is aged 20 years.

6. The loss of monthly income would come to Rs.5,000/- + (Rs.5,000/- x 40% = Rs.2,000/-) = Rs.7,000/-. The deceased, being bachelor, half (1/2) of the income has to be deducted towards personal expenditure by following the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] i.e. Rs.7,000/- x ½ = Rs.3,500/- would be the loss of monthly income and the loss of annual income would come to Rs.3,500/- x 12 = Rs.42,000/-. The multiplier relevant for the age of the deceased as per SARLA VERMA's case (2 supra) is '18'. Hence, the loss of future income would come to Rs.42,000/- x 18 = Rs.7,56,000/-. Apart from the above, following PRANAY SETHI's case (supra), Rs.15,000/- is

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[1] AIR 2014 SC 1052

[2] (2009) 6 SCC 121

awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimant is entitled to total compensation of Rs.7,56,000/- + Rs.15,000/- + Rs.15,000/- = Rs.7,86,000/-. Though the compensation granted exceeds the claim amount, now the law is 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. This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA[4] 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 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.

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T. RAJANI, J

December 15, 2017
DSK

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