

SMT JUSTICE T. RAJANI

MACMA.No.996 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the II Additional Chief Judge, City Civil Court, Hyderabad in OP.No.1580 of 2007 dated 04.10.2010 on the grounds that the Court below did not award adequate compensation and the earnings taken by the Court below at Rs.3,000/- per month are also very low.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that it took the income of the claimant as Rs.3,000/- per month, by considering that there was no evidence adduced with regard to the income of the claimant. The claimant is stated to be a mason/maistry, which fact is not seriously disputed.

4. The counsel for the respondent-insurance company contends that as per the description of the injured in the charge sheet, he is only a labourer but the counsel for the appellant contends that the contents of the charge sheet do not stand the test of credibility as against the positive evidence that comes from the witnesses.

5. Apart from the injured, being examined as P.W.1, he got examined P.W.3, who is his brother, who stated that they were returning after doing mason work. In the ordinary course, every mason would also be referred as labourer. Hence, the contents of the charge sheet must not be taken as conclusive proof of the fact that the

injured was working only as a labourer. There is no evidence adduced to discredit the evidence on of P.W.3 on the aspect of the injured being a mason and apparently nothing was elicited from the cross-examination, to disbelieve the fact that the injured was working as mason.

6. The counsel for the appellant relied on a decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.¹ wherein the income of the vegetable vendor was taken as Rs.6,500/- per month and pleads that the earnings of the claimant can be taken as Rs.6,500/- per month. The counsel for the appellant also relied on a 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] to contend that the future hike in the income is also to be considered and the deceased, being 31 years, the future hike has to be 40% as per the said decision.

7. According to the evidence of P.W.1, his earnings are only Rs.6,000/- per month. Hence, the same can be taken as the monthly earnings of the claimant.

8. If the future hike at 40% is added, the monthly income would come to Rs.6,000/- + (Rs.6,000/- x 40% = Rs.2,400/-) = Rs.8,400/- and the loss of annual income would come to Rs.8,400/- x 12 = Rs.1,00,800/-. The age of the deceased, being 31 years, the multiplier relevant as per the decision of the Supreme Court in

¹ AIR 2014 SC 1052

SARLA VERMA v. DELHI TRANSPORT CORPORATION² is '16'.

Hence, the loss of future income to the claimant would come to Rs.1,00,800 x 16 = Rs.16,12,800/-. Apart from the above, following the decision of the Supreme Court in PRANAY SETHI's case (supra) Rs.1,50,000/- is awarded towards pain and suffering and Rs.1,50,000/- is awarded towards loss of future amenities of life and Rs.2,00,000/- is awarded towards future treatment, as the claimant filed the estimation for artificial leg for Rs.1,76,000/-.

9. The counsel for the respondent submits that the estimation was not proved by examining the concerned person. The counsel for the appellant submits that P.W.2, who is the doctor, nevertheless stated that the injured would require artificial leg. Even otherwise it is of common understanding, that the case being one of amputations would require an artificial leg and following the decision of the Supreme Court in GOVIND YADAV v. NEW INDIA ASSURANCE CO. LTD.³ an amount of Rs.2,00,000/- is awarded, as it is the amount awarded towards future treatment and replacement of artificial leg.

10. Hence, in all, the claimant is entitled to total compensation of (Rs.16,12,800/- - Rs.5,76,000/- = Rs.10,36,800/-) + Rs.1,50,000/- + Rs.1,50,000/- + Rs.2,00,000/- = Rs.15,36,800/-. 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 SINGH⁴, wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in ADAM

² (2009) 6 SCC 121

³ 2012 ACJ 28

⁴ (2013) 9 SCC 54

INDUR MUTEMMA v. RATHOD PEDDITA⁵ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

11 Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimant 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 civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 14, 2017
DSK

T. RAJANI, J



⁵ 2015(4) ALD 585 (LB)