

SMT JUSTICE T. RAJANI

MACMA No.2821 of 2013

JUDGMENT:

This appeal is filed by the appellants, who are the claimants before the court below, assailing the judgment of the XXII Additional Chief Judge – cum- Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad in OP No.1224 of 2010 , dated 24.08.2012 on the grounds that the court below did not award adequate compensation.

2. Heard the counsel for the appellants. None appears for the respondents.

3. The counsel for the appellants contends that the court below took only Rs.4,000/- as monthly income of the deceased, who was proved to be a Mason. He now contends that at least Rs.4,500/- should be the income of the deceased as per the ruling of the Supreme Court reported in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*,¹.

There need not be any hesitation on the part of this court to take the income of the deceased as Rs.4,500/- per month.

The counsel also takes the help of the ruling of the Apex 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 future hike should be 40% as he is self employed and aged 40 years. After adding 40% hike, the monthly income would come to Rs.6,300/-. The claimants, being

¹ 2011 ACJ 2436

five in number, $1/4^{\text{th}}$ should be deducted towards the personal expenditure of the deceased as per the decision of the Supreme Court in *Sarla Verma v. Delhi Transport Corporation*². Then, the loss of monthly income to the claimants would come to Rs.4,725/- and the loss of annual income would come to Rs.56,700/-. The multiplier relevant for the age of the deceased is '15' as per the decision in *Sarla Verma's case* Rs.56,700/- X 15 = Rs.8,50,500/-.

4. Apart from the above, following *Pranay Sethi's case* (supra), Rs.40,000/- is awarded towards loss of consortium, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.8,50,500/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.9,20,500/- with proportionate costs. 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 the claimed amount, subject to payment of court-fee.

5. The lower court attributed 25% negligence to the deceased, who was the rider of the motor cycle, by considering that the

² (2009) 6 SCC 121

³ (2013) 9 SCC 54

⁴ 2015(4) ALD 585 (LB)

deceased hit a stationed lorry, but the evidence is very clear that the accident occurred during night time and that the lorry was parked without any parking indicators. In the above circumstances, there would be no scope for the deceased to observe the stationed lorry and attributing negligence to the deceased is not sustainable. Hence, the judgment is also modified to the extent of the contributory negligence on the part of the deceased and it is concluded that the accident occurred due to the negligence of the driver of the lorry, who parked the lorry without any parking indicators.

6. Hence, the award of the Court below is modified to the extent indicated above. 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.

Accordingly, the MACMA is allowed with proportionate costs. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 19, 2017
LMV

T. RAJANI, J