HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE T.RAJANI

MA CMA No.455 of 2013

JUDGMENT: (Per the Hon'ble Smt Justice T. Rajani)

This appeal is filed by the appellants, who are the claimants before the court below, assailing the judgment passed by the II Additional District Judge, Visakhapatnam in MVOP.No.175 of 2010 dated 05.12.2012, on the grounds that the court below erred in awarding meagre amounts as compensation; it erred in holding that the accident took place due to the contributory negligence, by ignoring the categorical evidence, which proves that the accident took place because of the rash and negligent driving of the driver of the lorry; it erred in not taking 50% of the salary of the deceased towards future prospects, for determining the compensation; it erred in deducting 1/3rd towards personal expenses of the deceased though 1/4th has to be the deduction, as the dependants are five in number; it did not award any amounts under the head loss of love and affection, loss of estate, loss of amenities of life. On the above grounds, the appellants seek to set aside the impugned order.

2. The facts of the case, in a nutshell, read as follows:

On 03.07.2009 at about 01:20 AM, while the deceased was going on a scooter, after completing his duty at auto nagar, towards Vadlapudi and when he reached near Vadlapudi junction, a lorry bearing No.AP 16 TT 8105 suddenly stopped, without giving any signals, as a result of which the scooter dashed against the lorry and the deceased died by sustaining fatal injuries.

1st respondent remained *ex parte.* 2nd respondent filed counter denying the averments made in the petition and further contending that the 1st respondent committed breach of specified terms and conditions of the policy and also alleging contributory negligence on the part of the deceased. The court below after framing appropriate issues, passed the impugned judgment, granting Rs.14,79,953/- as compensation by holding that there was 50% negligence on the part of the deceased.

3. Heard both the learned counsel. The attack on the judgment is with regard to the negligence of 50% that was concluded against the deceased and the inadequacy of the compensation.

4. The points that arise for our consideration are:

1) Whether there was negligence on the part of the deceased and if so, whether to the extent of 50%.
2) Whether the compensation awarded by the court below is adequate.
3) To what result.

<u>POINT No.1:-</u>

5. The court below considered the report, which was given by the complainant vis-à-vis the evidence of PW3, who is an eye witness to the accident, and concluded that the deceased was at fault to an extent of 50%. The counsel for the appellants

contends that the approach of the court below in disbelieving the evidence of PW3, who categorically stated that the accident occurred due to the rash and negligent driving of the driver of the lorry, who suddenly stopped the lorry due to which the scooter of the deceased dashed against it, is erroneous.

6. A perusal of the judgment would show that the court below, while disbelieving the evidence of PW3 held that the 1st respondent parked his vehicle on the side of the road at Vadlapudi Junction and the deceased, while proceeding to his house on his scooter, without noticing the said lorry, dashed on its backside. Whether the said conclusion drawn by the court below would suffice to conclude that the deceased contributed to the accident to an extent of 50% is to be appreciated.

7. If the evidence of PW3 was believed, at least it could have been possible to say that the deceased dashed against the lorry, as he did not keep sufficient distance between his vehicle and the lorry and thereby some negligence could have been attributed to the deceased. But when the court below held that the vehicle was parked on the road, which fact could have been in all probability gathered from the report that the lorry was parked without any parking lights, it should not have held that the deceased was negligent. The accident admittedly occurred at 01:30 AM, which is a dark time of the night. Hence, it cannot be assumed that the deceased would be able to observe the lorry with the help of the faint lights of his vehicle. Hence, in our view,

the accident occurred only due to the negligence of the driver of the lorry, who parked the lorry without any parking lights.

8. In view of the above reasoning, the judgment of the court below, to the extent of concluding negligence against the deceased to an extent of 50%, is set aside and the negligence is held to be solely on the part of the driver of the lorry.

Accordingly, point No.1 is answered in favour of the appellants.

<u>POINT No.2:-</u>

9. The deceased is stated to have been working as a Senior Production Assistant in the office of PW2. PW2 spoke about the salary of the deceased and according to her, Rs.18,815/- per month is the net salary of the deceased. The career growth path of the deceased is also marked as Ex.X2, which also spells the *ex gratia* payment made to the wife of the deceased. The court below took the net salary, as stated by PW2, and made the calculation. It also declined to consider the future prospects @ 50%, on the ground that the deceased was working as a private employee and hence, cannot be treated as a person having a permanent job.

10. The counsel for the appellants submits that the approach of the court below in taking the net salary, as stated by PW2, is not proper. He contends that except the Professional Tax and the Income Tax, no deductions can be made from the gross salary while arriving at the net salary. The gross salary,

as evidenced by Ex.X1, is Rs.24,982/-. The professional tax is shown as Rs.150/-. The counsel contends that the Income Tax that has to be deducted would be only 10%, as the taxable annual income has to be arrived at only after deducing Rs.1,60,000/-, which is exempted form the Income Tax. We find merit in the contention, in respect of income tax deduction.

11. The other contention of the counsel, is that except the Income Tax and the Professional Tax, no other deductions can be made. Let us examine. The pay slip-Ex.X1 shows that the conveyance Allowance of Rs.1,100/-, Washing Allowance of Rs.175/-, Lunch Allowance of Rs.156/-, Press Conveyance of Rs.1,300/- were also being paid to the deceased. The said allowances, in our view, cannot be deducted from the gross salary, as, though they would not add to the income of the deceased, they are specifically allowed towards the personal expenses of the deceased. We are any how making deduction towards the personal expenses of the deceased, which would include his conveyance, lunch, washing and other expenses. Hence, when the above amounts are included in the salary and deduction of professional tax alone is made, the net salary would come to Rs.24,832/-.

12. As regards the future prospects of the deceased, reliance is placed by the counsel on the Constitutional Bench judgment of the Apex Court in *National Insurance Company Limited v.*

Pranay Sethi and others[1], wherein, guidelines for considering the future prospects of the deceased are laid. In paragraph 61 of the judgment at clause (iii), the apex court held that while determining the income, an addition of 50% of actual salary to the income of the deceased, towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made and at clause (iv), it was held that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be awarded.

13. The counsel for the respondents contends that since the deceased is not a government employee, he cannot be considered as a permanent employee. But we are unable to accept the said contention. The Supreme Court did not specify that 50% should be taken as future prospects only for a Government employee. It only held that any person, who had a permanent job, would be entitled for such a hike in the salary. In order to understand the meaning of the words, 'permanent job', it has to be understood in the context of the meaning assigned to the term, 'fixed salary'. The apex court in the case of *Sarla Verma v. Union of India*[2] explained fixed salary as a salary without annual increments.

14. In the light of the said explanation given to the term fixed salary, it has to be understood that a person drawing pay scale with annual increments has to be considered as a person doing a

[1] 2017(6) ALT 60 (SC)
[2] (2009) 6 SCC 121

permanent job. The usage of the words by even the Constitutional Bench of the Apex Court in *National Insurance Company Limited*'s case, at paragraph 34, would indicate that fixed salaried persons are those persons who do not draw increments. These are the relevant words "First we shall deal with the reasoning of straitjacket demarcation between the permanent employed persons within the taxable range and the other category where deceased was self-employed or employed on fixed salary *sans* annual increments, etc." It is very clear from the above rulings that the apex court did not intend to exclude the persons, who are drawing the salary with increments from the purview of permanent job holders.

15. Having understood the deceased to be a permanent job holder, 50% has to be taken as future prospects. Then the loss of future monthly income would be Rs.37,248/- and the loss of annual income would be Rs.4,46,976/-. After deducting the exempted Rs.1,60,000/-, the taxable income would be Rs.2,86,976/-. It is from this amount that 10% has to be deducted towards income tax. That would be Rs.28,697/-. The said amount has to be deducted from the annual income. Then the annual income comes to Rs.4,18,279/-. Since the claimants are five in number, 1/4th has to be deducted towards the personal expenditure of the deceased as per the decision of the Supreme Court in *Sarla Verma's* case (2 supra). Hence, after deducting 1/4th, the income would come to Rs.3,13,710/-. The undisputed age of the deceased is 35 years. The multiplier

of '16' for the said age is disputed. Hence, Rs.3,13,710/- X 16 = Rs.50,19,360/-.

16. Apart from the above, following the decision in *National Insurance Company Limited*'s case, Rs.40,000/- is awarded towards loss of consortium to the 1st appellant and Rs.15,000/- each towards loss of estate and loss of funeral expenses is awarded. Thereby, the enhanced amount would come to Rs.50,19,360/- + Rs.70,000/- = Rs.50,89,360/-, which can be rounded off to Rs.50,89,360/-.

17. Though the compensation amount exceeds the claim amount, 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.

18. The award stands enhanced to the extent indicated above and the rest of the award shall remain in tact. The apportionment shall be made in the same proportion as was made by the court below. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

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

19. Accordingly, point No.2 is also answered in favour of the appellants.

POINT No.3:

The MACMA is partly allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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JUSTICE C.PRAVEEN KUMAR

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JUSTICE T. RAJANI

August , 2018
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