

SMT JUSTICE T. RAJANI

MA CMA No.3993 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are claimants before the court below, against the judgment, dated 11.05.2009, passed by the III Additional Chief Judge, City Civil Courts, Hyderabad, in O.P.No.1193 of 2007 on the grounds that the court below wrongly granted less compensation, without appreciating the evidence and also wrongly took the age of the deceased on higher side and adopted inappropriate multiplier; the court below, though, held that the accident occurred due to the composite negligence of both the drivers, wrongly apportioned the compensation to the extent of 50% against respondents 1 and 2 and wrongly apportioned the negligence on each driver.

2. Heard both sides.

3. The counsel for the appellants contends that in a claim arising out of the same accident, this court in MA CMA No.1775 of 2011 has decided the same aspects raised by the appellants therein. The manner of accident shows that the deceased was travelling in the auto as a passenger and the accident is a result of collision between the auto and the tractor. Hence, the deceased stands to be a third party to both the vehicles. The case falls within the category of composite negligence. The counsel, in support of his argument, that in case of composite negligence 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*¹; 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 between the two vehicles involved in the accident and depriving the claimants of 50% of the compensation, which was awarded against the second vehicle, cannot be sustained. Hence, respondents 1 and 2 shall be jointly and severally liable for the entire award amount.

4. As regards the adequacy 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*², 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

¹ 2015 ACJ 1441

² AIR 2014 SC 1052

of the deceased would come to Rs.6,250/-. The claimants being four in number, $1/4^{\text{th}}$ should be deducted towards the personal expenses of the deceased, as per the ruling of the Apex Court in *Sarla Verma v. Delhi Transport Corporation*³. After deducting $1/4^{\text{th}}$ from 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 of the deceased as per *Sarla Verma's* case (3 supra) is '13' and if Rs.56,256/- is multiplied with the relevant multiplier '13', it would come to Rs.7,31,328/-. The same is awarded towards loss of future income to the claimants.

5. 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 funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.7,31,328/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.8,01,328/-, which is rounded off to Rs.8,01,000/-. 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*⁴, 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*

³ (2009) 6 SCC 121

⁴ (2013) 9 SCC 54

*Peddita*⁵ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

6. 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 compensation shall be apportioned among the claimants in the same proportion as per the award of the Court below.

7. Accordingly, with the above directions, the Civil Miscellaneous Appeal is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

July 27, 2018
LMV

T. RAJANI, J

⁵ 2015(4) ALD 585 (LB)