

SMT JUSTICE T. RAJANI

MA CMA No.264 of 2012

JUDGMENT:

This appeal is preferred against the judgment, dated 09.04.2007, passed by the VIII Additional District Judge at Guntur, in MVOP No.1281 of 2004, on the grounds that the court below erred in attributing negligence to the deceased and in taking annual income of the deceased as Rs.15,000/-; that since the deceased was working as coolie; it ought to have taken the income of the deceased as Rs.3,000/- per month.

2. This claim arises out of the death of a person in the motor accident, which occurred on 28.11.2004. The deceased was going on a scooter along with his friend. While returning home when they reached happy club on National High Way, a lorry bearing No.AP 9V 1514 was stationed on the road without any parking lights or signals, due to which the deceased dashed against the said lorry and died on the spot.

3. Respondent No.1 remained *ex parte* while respondent No.2 filed counter denying the averments in the petition and contending that the claim is bad for misjoinder of the parties.

4. The court below after considering the evidence and the material on record passed the impugned judgment, which is assailed in this appeal.

4. Heard both sides.

5. The counsel for the appellants contends that the court below erroneously concluded negligence on the part of the deceased, only based on the fact that three persons were travelling on the scooter. The accident occurred during night time. The case of the claimants was that the lorry was stationed without any parking lights, as a result of which the deceased could not observe the lorry and dashed his scooter to the lorry. The charge sheet is also filed against the driver of the lorry. The counsel also contends that adopting notional income of the deceased as Rs.15,000/- per annum is also erroneous, as there is evidence to show that the deceased was working as a coolie. He urges that at least Rs.3,000/- can be taken as the monthly income of the deceased.

6. The counsel for the 2nd respondent contends that the court below went on the premise that the claim petition was filed under Section 163-A of the Motor Vehicles Act. Hence, the ruling of the apex court in *Sarla Verma v. Delhi Transport Corporation*¹ cannot be applied to the facts of the present case.

7. Now the points that arise for consideration are:

- 1) Whether the negligence attributed to the deceased can be upheld.
- 2) Whether the application is filed under Section 163-A of the Act.
- 3) To what result.

¹ (2009) 6 SCC 121

POINT No.1:-

8. The accident, admittedly, occurred during night time and the lorry was stationed on the road. The evidence of PW2, who is an eye witness, is that there were no parking lights to the lorry and hence, the deceased could not observe the lorry and dashed against it. The FIR was also registered against the driver of the lorry and after due investigation, charge sheet was also filed against the driver of the lorry. There is absolutely no rebuttal evidence adduced by the 2nd respondent to disprove the evidence of PW2 and the contents of the FIR and the charge sheet. Merely because the deceased was going along with two pillion riders, it cannot be said that he was driving the vehicle negligently. When there is positive evidence that the lorry was stationed on the road without any parking lights, there need not be any assumption that the triple riding on the scooter lead to the accident. Hence, in view of the above, this court opines that the judgment of the court below, to that extent, needs to be set aside and it can be held that the accident occurred due to the negligence of the driver of the lorry.

Accordingly, point No.1 is answered.

POINT No.2:-

9. Though the court below seems to have gone on the premise that the application was filed under Section 163A of the Act, a perusal of the claim application shows that it was also filed under Sections 163-A, 166 and 140 of the Act. Hence, there is no embargo to apply the principles of *Sarla Verma's* case to

this case also. The deceased is stated to be an agricultural labourer. He is aged 23 years. Hence, the evidence of PW1 that he was working as a coolie need not be disbelieved and in the least Rs.3,000/- can be taken as his monthly income. The dependants of the deceased are five in number. Hence, the deduction towards personal expenditure of the deceased should be $1/4^{\text{th}}$. Then the loss of monthly income to the petitioner would be Rs.2,250/- and the loss of annual income would be Rs.2,250/- X 12= Rs.27,000/-. The multiplier relevant for the age of the deceased as per *Sarla Verma's* case is '17'. Hence, Rs.27,000/- X 17 comes to Rs.4,59,000/-. Hence, the same is awarded towards loss of future income to the claimants.

10. Apart from the above, Rs.40,000/- is awarded towards loss of consortium; Rs.15,000/- is awarded towards loss of estate; and Rs.15,000/- towards funeral expenses, 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]. Hence, the total award comes to Rs.5,29,000/-.

11. Now the law is well settled by virtue of the decision of the Supreme Court in *Rajesh v. Rajbir Singh*², 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.*

² (2013) 9 SCC 54

*Rathod Peddita*³ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

12. Hence, the award of the Tribunal is modified and the awarded amount shall be Rs.5,29,000/-, as arrived at by the Tribunal, 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 Tribunal. The enhanced compensation shall be apportioned among the claimants in the same proportion as per the award of the Tribunal.

Accordingly, point No.2 is answered.

POINT No.3 :-

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

T. RAJANI, J

July 20, 2018
LMV

³ 2015(4) ALD 585 (LB)