SMT JUSTICE T. RAJANI

MA CMA No.334 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the court below, assailing the judgment, dated 17.11.2011, passed by the I Additional District Judge, Guntur, in M.V.O.P.No.1609 of 2010 on the grounds that the court below did not award adequate compensation; it failed to consider that the deceased is elder member of the family and she was also a working woman and earning Rs.100/- per day; that it ought to have seen that the appellant is not directly dependant upon the deceased but the deceased is also kartha of the family and the appellant has lost the estate of the deceased; it ought to have seen that the deceased was also contributing her earnings to the family and further all the family members constitute a joint family and they are depending upon each other. On the above grounds, the appellant seeks to set aside the judgment of the court below.

2. Heard the counsel for the appellant. None appears for the respondent in spite of notice.

3. The case arises out of an accident, which occurred on 09.11.2010, in which the deceased, who was standing on the road margin, was hit by an RTC Bus bearing No.AP 28Z 1649. The age of the deceased is stated to be 50 years and she was doing coolie work and earning Rs.100 per day. The claimant is the son of the deceased. The court below, by considering that

the appellant is not dependant on the earnings of the deceased, awarded only Rs.50,000/-, under no fault liability, under Section 140 of the Motor Vehicles Act.

4. Assailing the said judgment, the appellant comes before this court. The counsel for the appellant relies on the judgment of the Full Bench of this court reported in *Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy*[1]*.* The Full Bench approved the judgment of the Division Bench of this court in *Vanguard Insurance Co. Ltd., v. Chella Hanumantha Rao {1975 ACJ 344}*, wherein it was held that even though the claimants are not dependant on the income of the deceased, they would be entitled to make a claim for compensation. Operative portion of the same reads as follows:

> "Section 166 of the Act provides for making an application for award of compensation arising out of an accident of the nature specified under Section 165(1). The provision under Section 166(1) expressly provides for making such application by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased. Section 166(1) further makes it clear that if all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. From a perusal of the said provision, it is clear that application for compensation can be made not only by dependant but by any legal representative of the deceased. Further, the word legal representative is defined in the Rules by adopting the same meaning of legal representative as defined under Section 2(11) of the Code of Civil Procedure. In the judgment in Megjibhai Khimjis case (6 supra), a Division

[1] 2016(2) ALD 226 (FB)

Bench of Gujarat High Court has clearly held that the brother of a person who dies in a motor vehicle accident, is entitled to maintain claim petition under Section 110-A of the Motor Vehicles Act, if he is a legal representative of the deceased. Such view is approved by the Honble Supreme Court also in Montford Brothers case (5 supra).

14. In view of the plain language under Section 166 of the Motor Vehicles Act, 1988, which is a substantive provision for making application for compensation, it is clear that either the injured person or the legal representative of the deceased are entitled to make an application for award of compensation. Dependency is a matter, which will have a bearing on the issue with regard to fixation of compensation and apportionment of compensation if there are more than one claimant, but at the same time, in view of the plain and unambiguous language used under Section 166 of the Motor Vehicles Act, the term legal representative does not mean dependant only. It is fairly well settled that the legal representative is one who can represent the estate of the deceased. Further, in the judgment in Manjuri Beras case (9 supra), the Honble Supreme Court has held that the no fault liability envisaged under Section 140 of the Motor Vehicles Act is distinguishable from the rule of strict liability. In the aforesaid judgment, it is further held that right to make an application has to be considered in the background of right to entitlement. It is further held that while assessing the quantum of compensation, the multiplier system is applied because of deprivation of dependency. In the same judgment, it is also held that since the amount to be awarded under Section 140 of the Motor Vehicles Act is a fixed/crystalised amount, the same is to be considered as a part of the estate of the deceased. Apart from the same, there can be a claim for compensation under other conventional heads which are to be necessarily incurred in the case of deaths."

4. In view of the above, there need not be any further discussion on the entitlement of the appellant for compensation.

5. Coming to the aspect of quantum of compensation, the deceased was stated to be working as a labourer and earning

Rs.100/- per day. But there is absolutely no evidence adduced in support of the said claim. However, considering the age of the deceased, which is stated to be 50 years, and as the same is not disputed, it can be assumed that she would render services to the family, the value of which, in the least, can be estimated at Rs.3,000/- per month. Hence, the income of the deceased in the least can be taken as Rs.3,000/- per month. Out of which, 1/3rd has to be deducted towards her personal expenditure, then the loss of monthly income would be Rs.2,000/- per month and the loss of annual income would come to Rs.24,000/- per annum. The multiplier relevant for the age of the deceased as per SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] is '11'. Hence, the loss of future income would come to Rs.24,000/- x 11 = Rs.2,64,000/-.

6. Apart from the above, following the 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], Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the appellant is entitled to total compensation of Rs.2,64,000/- + Rs.15,000/- + Rs.15,000/- = Rs.2,94,000/-. Though the compensation granted exceeds the claimed 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

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[2] (2009) 6 SCC 121
[3] (2013) 9 SCC 54

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.

7. 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, accordingly, allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

August 3, 2018
LMV

[4] 2015(4) ALD 585 (LB)