

SMT JUSTICE T. RAJANI

MA CMA No.194 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the court below, questioning the judgment, dated 10.01.2006, passed by the I Additional District Judge, Mahabubnagar, in O.P.No.149 of 2004, on the grounds that the court below did not award adequate compensation; that though it rightly held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, went wrong while awarding compensation of Rs.1,65,000/- though the appellants are entitled for the entire compensation; that it ought to have seen that the deceased was earning Rs.3,000/- per month besides Rs.50/- per day, as batta, as the deceased was working as a driver and used to contribute all of his earnings for the maintenance of the family. Based on the above, the appellants seek to set aside the judgment of the court below.

2. Heard both the counsel.

3. The facts, in brief, are that on 27.03.2001 while the deceased, along with others, was going in a jeep to attend a meeting addressed by Central Minister and after the meeting was over, while they were returning in the same jeep and when they reached near Shakapur of Addakal mandal on NH7, the offending lorry bearing No.AP9T45 came from Pebbar side to go towards Hyderabad side and it was being driven in a rash and

negligent manner and high speed and dashed against the said jeep, due to which the deceased sustained fatal injuries.

4. The deceased was earning Rs.3,000/- per month besides Rs.50/- per day as batta by working as a Driver. The claimants are mother and sisters of the deceased, who is an unmarried person. The court below took the income of the deceased as Rs.2,400/- per month and while calculating the compensation, it took the multiplier relevant to the age of the mother of the deceased.

5. The appellants' counsel now assails the said two aspects and contends that the age of the deceased is relevant for adopting specific multiplier i.e., 17, as per the ruling of the apex court in *Sarla Verma v. Delhi Transport Corporation*¹. The counsel for the respondent does not dispute the said fact. The age of the deceased as per Ex.A2 i.e., Post Mortem Examination report is 25 years. Regarding the income of the deceased, though there is no evidence adduced, he is stated to be a driver and since he is aged 25 years, it can be accepted that he was working as a Driver and Rs.3,000/- was claimed to be his monthly income. The same is taken into consideration, the deceased being aged 25 years.

7. In view of the ruling of Apex Court reported in Special Leave Petition (Civil) No.25590 of 2014 between *National Insurance Company Limited vs. Pranay Sethi and others*, 40% has to be the future hike in the salary of the deceased.

¹ (2009) 6 SCC 121

Hence, the loss of monthly income to the claimants would be Rs.4,200/-. The deceased being an unmarried person, half of the said amount has to be deducted. Hence, Rs.2,100/- is to be considered as loss of monthly income to the claimants. Loss of annual income would then come to Rs.2,100/- X 12 = Rs.25,200/-. The multiplier relevant for the age of the deceased, as discussed supra, being 17, the loss of future income to the claimants would work out to Rs.25,200/- X 17 = Rs.4,28,400/-.

8. Apart from the above, following *Pranay Sethi's* case (supra), 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 a total compensation of Rs.4,28,400/- + Rs.15,000/- + Rs.15,000/- = Rs.4,58,400/-, rounded off to Rs.4,59,000/-

9. 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*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. Rathod Peddita*³ 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 claimants shall pay

² (2013) 9 SCC 54

³ 2015(4) ALD 585 (LB)

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

The civil miscellaneous appeal is, accordingly, allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

August 3, 2018
LMV



T. RAJANI, J