SMT JUSTICE T. RAJANI

MA CMA No.217 of 2012

JUDGMENT:

This appeal is preferred by the appellant/claimant, assailing the judgment of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor, dated 11.01.2007, in MVOP No.214 of 2005, on the grounds that the lower court did not properly appreciate the evidence on record and did not award adequate compensation and failed to appreciate Ex.A7-Salary Certificate and took Rs.3,000/- by applying II Schedule of the Motor Vehicles Act, 1988.

2. Heard both the counsel.

3. This is a case where the appellant sustained grievous injuries in the motor accident and an injury lead to amputation of his right leg, above knee. The appellant was working as Security Guard in APSRTC Alipiri Depot and was drawing salary of Rs.5,136/- per month, as per the salary certificate-Ex.A7. The Court below took the net salary of the deceased as Rs.2,864/-. But, however, it took Rs.3,000/- by adopting II Schedule of the M.V.Act. But a perusal of the salary certificate shows that the deductions, that have to be considered for arriving at net salary, are only towards Income Tax and CCS, which are respectively Rs.368/- and Rs.462/-. When these amounts are deducted from Rs.5,136/-, the net salary would come to Rs.4,306/-. The appellant is stated to be 32 years old and is a permanent job holder. Hence, as per the ruling of the

Apex Court reported in Special Leave Petition (Civil) No.25590 of 2014 between *National Insurance Company Limited vs. Pranay Sethi and others*, 50% has to be the future hike in the salary. After considering the same, the monthly salary would come to Rs.6,459/-. The disability sustained by the appellant is stated to be 70%. The lower court took the same, though the appellant did not adduce any evidence with regard to the said disability. However, as the same is not disputed, 70% can be taken as the disability affecting the income of the petitioner. 70% of the salary i.e., 6,459/- would come to Rs.4,521/- and the loss of annual income would come to Rs.54,252/- (Rs.4,521/- X 12). The multiplier adopted by the lower court is '17', but the counsel fairly submits that the multiplier should be '16' as per the ruling of the apex court in Sarla Verma v. Delhi Transport Corporation[1]. Hence, Rs.8,68,032/- i.e., Rs.54,252/- X 16 is awarded towards loss of income due to permanent disability, as against Rs.4,28,000/- awarded by the court below.

4. The counsel also submits that towards loss of earnings for three months the appellant is entitled to an amount of Rs.12,918/- i.e., Rs.4,306/- X 3, after calculating on the basis of the net salary arrived at by this court. Hence, the same is awarded towards loss of income for a period of three months and after deducting the amount of Rs.9,000/- awarded by the court below, it comes to Rs.3,918/-.

[1] (2009) 6 SCC 121

5. In all, the claimant is entitled to Rs.8,68,032/- towards permanent disability, as against Rs.4,28,400/-, and Rs.3,918/- towards loss of earnings during treatment, in addition to the other amounts awarded by the lower court.

6. Hence, the award stands enhanced to the extent indicated above and the rest of the award shall remain in tact. 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.

Accordingly, 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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T. RAJANI, J

July 13, 2018
LMV