

SMT JUSTICE T. RAJANI

MA CMA No.3749 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the court below, questioning the judgment, dated 20.09.2007, passed by the II Additional Chief Judge, City Civil Court, Hyderabad, in O.P.No.3120 of 2005 on the grounds that the court below did not award the compensation claimed by the appellants; that it failed to see that while awarding the amount towards loss of earning capacity, other factors have to be taken into consideration; and that it failed to see that the age of the deceased is 36 years but it has taken the age of the deceased as 45 years.

2. Heard both the counsel.

3. This is a case of death of the deceased in a motor accident, which occurred on 11.08.2005. The deceased was going on his scooter to Kukatpally and at about 10:00 PM, he was hit by a lorry bearing No.AP 25T 2112, which came in a rash and negligent manner. Prior to the accident, the deceased was working as a Master Technician and was drawing Rs.15,200/- per month. The claimants are the wife, children, and mother of the deceased.

4. The counsel for the appellants relies on the ruling of the Division Bench of this court in MA CMA No.839 of 2013 in support of his contention that the gross salary of the deceased

has to be taken. The court below by considering all the deductions from the salary of the deceased took the salary as Rs.4,158/-. But the deductions only in respect of professional tax has to be considered for arriving at net salary as per the ruling of the apex court reported in *Sarla Verma v. Delhi Transport Corporation*¹. Then the salary of the deceased would be Rs.15,100/- per month, as the professional tax is only Rs.100/-. The law is well settled that except the professional tax and the income tax, all other deductions are statutory deductions. Hence, Rs.15,100/- stands to be the monthly income of the deceased.

5. The counsel also takes the help of 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] to contend that 30% has to be the future hike in the income of the deceased as he is aged 45 years. The date of birth of the deceased is stated to be 03.10.1960. The same is not disputed by the counsel for the respondent. Hence, his age as on the date of accident is 45 years. The multiplier relevant for his age as per *Sarla Verma's* case is '13'. After addition of 30% as future prospects, the monthly income of the deceased would be Rs.19,630/- { i.e., Rs.15,100/- + [Rs.15,100/- X 30%] }. Out of the same, 1/3rd has to be deducted towards personal expenditure. After the said deduction, the loss of monthly income to the claimants would be Rs.13,087/-. Loss of annual income to the claimants would be

¹ (2009) 6 SCC 121

Rs.1,57,044/-. The multiplier relevant for the age of the deceased being '13', the loss of future income to the claimants would come to Rs.78,516/- X 13 = Rs.20,41,572/-.

7. 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 a total compensation of Rs.20,41,572/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.21,11,572/-.

8. 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 SINGH², 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 PEDDITA³ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

9. 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 enhanced compensation shall be apportioned among the

² (2013) 9 SCC 54

³ 2015(4) ALD 585 (LB)

claimants in the same proportion as per the award of the Court below.

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

T. RAJANI, J

August 3, 2018
LMV

