SMT JUSTICE T. RAJANI

<u>MACMA.No.1997 of 2011</u>

<u>JUDGMENT</u>:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.795 of 2009 dated 16.03.2011 on the ground that the Court below did not award adequate compensation.

2. Heard the counsel for the appellants. None appears for the respondents.

3. The deceased, in this case, is stated to be a mechanic running a shop and his income was claimed to be Rs.15,000/- per month. The Court below, however, considering that there was no evidence with regard to the income, took Rs.3,000/- per month as income of the deceased.

4. The counsel for the appellants now takes the help of the decision of the Supreme Court in SHIVAKUMAR M. v. BMTC[1] to contend that Rs.15,000/- has to be taken as the income of the deceased, as the Supreme Court took the said income in respect of person, who is a painter. The Supreme Court held that the appellant therein made self-estimation of his income of Rs.15,000/- to Rs.16,500/- and observed that for a casual worker, who goes from house to house and place to place doing his painting work, it is difficult to get any evidence, since there is no employer.

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[1] (2017) 5 SCC 79

5. The deceased, being a mechanic, the present case stands on a better footing. Hence, Rs.15,000/- has to be taken as the monthly income of the deceased.

6. The counsel also relied on a 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] to contend that the future hike in the income is also to be considered and the deceased, being 38 years, the future hike has to be 40% as per the said decision.

7. If the future hike at 40% is added, the monthly income would come to Rs.15,000/- + (Rs.15,000/- x 40% = Rs.6,000/-) = Rs.21,000/- and the annual income would come to Rs.21,000/- x 12 = Rs.2,52,000/-. Since the claimants are four in number, 1/4th has to be deducted towards the personal expenditure of the deceased as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2]. Hence, after deducting 1/4th, the income would come to Rs.2,52,000/- - (Rs.2,52,000/- x ¼ = Rs.63,000/-) = Rs.1,89,000/-. The age of the deceased, being 38 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (1 supra) is '15'. Hence, the loss of future income to the claimants would come to Rs.1,89,000/- x 15 = Rs.28,35,000/-. Apart from the above, following the decision of the Supreme Court in PRANAY SETHI's case (supra) Rs.40,000/- is awarded to the first claimant towards 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 total

[2] (2009) 6 SCC 121

compensation of Rs.28,35,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.29,05,000/-. Though the compensation awarded exceeds the claim, 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 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.

8. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimants shall pay the differential court-fee. The apportionment of compensation shall be made in the same proportion as made by the Court below. 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 allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 21, 2017
DSK

[3] (2013) 9 SCC 54
[4] 2015(4) ALD 585 (LB)