SMT JUSTICE T. RAJANI

MACMA.No.906 of 2006

JUDGMENT:

This appeal is preferred by the appellants, who are claimants before the Court below, assailing the judgment of the Principal District Judge, East Godavari District in OP.No.1169 of 2003 dated 10.01.2006 on the grounds that the Court below ought to have allowed the OP by believing the evidence adduced by the claimants that the deceased was earning more than Rs.8,000/- and it ought not to have drawn an inference to the effect that the deceased was not in service at the time of the accident. The Court below erred in taking the income of the deceased as Rs.1,500/- per month, notionally.

2. Heard both the counsel.

3. The deceased was stated to be working as a Personal Officer in Cement Corporation of India Limited, Tandur and he was drawing a salary of Rs.8,394.50 ps. per month; his age was 35 years at the time of the accident. The Court below considered the evidence of P.W.2, who testified about the salary of the deceased and stated that the deceased was relieved from their unit on 28.12.1998, as he was transferred to Akaltara but he did not report for duty at Akaltara due to which he was dismissed from the service of the corporation on 24.03.1999. The date of accident is 17.12.1999. The Court below, considering that the deceased was out of employment for about one year prior to his death in this accident, took Rs.1,500/- as the notional income of the deceased.

4. The counsel for the appellants contends that the Court below ought to have taken the salary of the deceased, as stated by P.W.2, as even if the deceased was not employed, at the time of the accident, he had the potential to take up employment, which would fetch a salary equal to which he has been drawing by working in the Cement Corporation of India Limited, Tandur.

5. This Court is unable to accept the said contention. The ground on which the deceased declined to join his duty at Akaltara is that he was not willing to move out of Tandur. Hence, the said conduct of the deceased would show that he had some inherent limitation to take up employment and it cannot be said with certainty that he would be getting employment in future only at the place of his choice i.e. Tandur. Hence, with the above stated limitation, the deceased cannot be assumed has having potential to gain employment with the same salary as he was drawing earlier. However, the notional income that was taken by the Court below seems to be on the lower side. The deceased, being 35 years of age, would, at any rate, be able to secure employment, which would fetch him at least a monthly salary of Rs.3,000/-. Hence, Rs.3,000/- is taken as the monthly income of the deceased. The contention of the counsel for the appellant to consider future hike of the salary and enhance the said salary by another 50% also cannot be accepted for the same reasons, which are stated above. Hence, after deducting 1/3rd of the income towards personal expenditure, Rs.2,000/- would be the loss of monthly income and Rs.24,000/- would be loss of annual income. There is no dispute on the multiplier '16' adopted by the Court below. Hence, the same is

taken for computing the loss of dependency of the claimants and thereby, Rs.24,000/- x 16 = Rs.3,84,000/- is awarded towards loss of future income to the claimants in the place of Rs.1,92,000/- awarded by the Court below.

6. The counsel for the appellants also seeks the Court to grant Rs.1,00,000/- towards consortium and loss of love and affection to the claimants, who are wife and daughter of the deceased respectively, by following the decision of a three Judge Bench of the Supreme Court in RAJESH v. RAJBIR SINGH[1]. On the other hand, the counsel for the respondents, relies on another decision of a three Judge Bench of the Supreme Court in RAMILABEN CHINUBHAR PARMA v. NATIONAL INSURANCE CO.[2] wherein only Rs.50,000/- was granted as a conventional amount.

7. The decision in RAMILABEN's case (2 supra) only upheld the award of Rs.50,000/- made by the Tribunal towards conventional amount and did not take up any discussion with regard to consortium or funeral expenses. The decision in RAJESH's case (1 supra) clearly dealt with aspect of consortium and funeral expenses and considered that, an award of Rs.1,00,000/- for loss of consortium would be just and reasonable. The Supreme Court observed as under:

> "… In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate.
> That non-pecuniary head of damages has not been properly understood by our Courts and that the loss of

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1 (2013) 9 SCC 54
2 (2014) 15 SCC 722

> companionship, love, care and protection etc., the spouse is has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement ..."

Hence, following the said decision, which elaborately dealt with the aspect of consortium and loss of love and affection, Rs.1,00,000/- is awarded to each of the two claimants.

8. The aforesaid decision also dealt with the aspect of funeral expenses and observed as under:

> "... The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of any evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000."

Hence, in this case also Rs.25,000/- is awarded towards funeral expenses.

9. The Court below apart from awarding Rs.1,92,000/- towards loss of future income, awarded Rs.15,000/- towards non-pecuniary compensation including consortium, but did not specify as to how

much amount is awarded towards consortium. Since, non-pecuniary loss is comprised by consortium and funeral expenses and as the same is taken care of by this Court, in all, an amount of Rs.3,84,000/- + Rs.2,00,000/- (Rs.1,00,000/- x 2) + Rs.25,000/- = Rs.6,09,000/-, is awarded as compensation to the appellants.

10. The award of the Court below is enhanced from Rs.2,07,000/- to Rs.6,09,000/- and the rest of the award is left uninterfered with. This award shall relate back to the date of decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award by the Court below.

The appeal, to the extent indicated above, is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

July 21, 2017
DSK