

SMT JUSTICE T. RAJANI

MACMA.No.1988 of 2012

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the Family Court – cum – Additional District Judge, Mahabubnagar in OP.No.640 of 2008 dated 05.09.2011 on the grounds that the deceased herself contributed to the accident by not observing the vehicle, while crossing the road and the Court below erred in granting Rs.2,25,000/- for the death of a five year old girl.

2. Heard both sides.

3. The counsel for the appellant, at the hearing, stressed only on the two grounds that are taken in the grounds of appeal.

4. With regard to the first ground, the Court below, under issue No.1, took up the discussion on the issue of negligence. It appreciated the fact that the second respondent did not choose to examine either the owner or the driver of the bus in support of their contention of contributory negligence by the deceased. The counsel tried to persuade this Court to consider his plea by contending that the evidence of P.W.2 was shaky with regard to his taking the girl while crossing the road and if that be true, the fact that he did not sustain injuries comes into contradiction with his evidence.

5. However, the mere fact, that P.W.1 did not sustain injuries, cannot be taken as the conclusive proof of his not accompanying the

deceased. It is also possible that the deceased alone would sustain injuries even if she was accompanied by P.W.1, if the manner of accident is as such. Hence, the said contention is not found to be merited.

6. As regards compensation that was awarded by the Court below, this Court does not find it to be excessive or exorbitant as the Supreme Court in KISHAN GOPAL v. LALA¹ dealt with a case of death of a 10 year old boy, who assisted his father in agriculture operations. Though the Supreme Court did not make any deduction in the above decision, it was laid down in SARLA VERMA v. DELHI TRANSPORT CORPORATION², that the issue to be determined by the tribunal to arrive at the loss of dependency include deduction to be made towards personal living expenses of the deceased. Hence, it cannot be said that the deceased, who is aged below 15 years, would not be incurring any expenditure towards his or her personal expenses. Hence, 50% of the income of the deceased should be deducted towards the personal expenses, she being an unmarried girl, as laid down by the Supreme Court in SARLA VERMA's case (2 supra). Hence, Rs.15,000/- would be the loss of annual income to the claimants. The age of the deceased is stated to be less than 15 years, hence, the appropriate multiplier, as per SARLA VERMA's case (2 supra), is '15'. Hence, the loss of future income to the claimants would come to Rs.15,000/- x 15 = Rs.2,25,000/- and hence there is no need to interfere with the judgment of the Court below.

¹ 2013 (8) SCJ 742

² (2009) 6 SCC 121

The civil miscellaneous appeal is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

December 6, 2017
DSK

T. RAJANI, J

