SMT JUSTICE T. RAJANI

MACMA No.140 of 2008

JUDGMENT:

This appeal is preferred by the insurance company, who is respondent No.4 before the tribunal below, assailing the award of the District Judge, Chittoor in OP.No.428 of 2002 dated 07.09.2007 on the following grounds:

The deceased was driving a Tempo Eicher with a load of tomatoes and was going to Thiruvellore, Tamilnadu and then a lorry dashed against the said tempo by coming in a rash and negligent manner. A criminal case was registered against the deceased and FIR reveals that due to his own negligence the accident occurred. The tribunal erred in believing the evidence of P.W.2, who is interested person and cleaner of the tempo and concluded negligence against the driver of the lorry. The tribunal also erred in calculating the compensation amount without deducting any amount towards personal expenditure of the deceased. Hence, the award of the tribunal cannot be sustained.

2. At the hearing, learned counsel for the appellant fairly concedes that the criminal case is filed against the driver of the lorry. Hence, the ground taken in the appeal that since the criminal case is filed against the deceased driver, negligence has to be concluded against him, does not get any support. Apart from the fact that the criminal case was booked against the driver of the lorry, the evidence of P.W.2 was, however, available before the tribunal to come to the

conclusion, which it had arrived at. Hence, there is no reason to interfere with the finding on the said aspect.

3. With regard to the approach of the tribunal in assessing the compensation amount, learned counsel for the appellant points out that the tribunal simply by relying on the decision of the Supreme Court in *NEW INDIA ASSURANCE COMPANY v. KALPANA* [2007 ACJ 825] failed to make any deduction towards the personal expenditure of the deceased. Learned counsel also submitted that the suitable multiplier relevant for the age of the deceased as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1] is '17' but the tribunal applied '18' as the multiplier.

4. Learned counsel for the respondents/claimants fairly concedes that the settled position of law is that some amount has to be deducted towards the personal expenditure of the deceased.

5. A perusal of the judgment of the tribunal shows that with regard to the income of the deceased, the tribunal, by following the ratio of the decision of the Supreme Court, referred to above, has taken Rs.3,000/- as income of the deceased after deducting his personal expenses. Hence, there cannot be any interference with regard to the income taken by the tribunal. However, the obvious error with regard to application of multiplier has to be corrected. Hence, applying the relevant multiplier '17' for the age of the deceased i.e. 26 years, according to SARLA VERMA's case (1 supra), the loss

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[1] (2009) 6 SCC 121

of dependency would come to Rs.3,000/- x 12 x 17 = Rs.6,12,000/-. To the extent indicated above, the award of the tribunal stands modified by substituting Rs.6,12,000/- for Rs.6,48,000/-, as awarded by the tribunal, under the head loss of dependency. The rest of the award shall stand unaltered.

6. Learned counsel for the appellant also contends that respondents 6 and 7 herein, parents of the deceased, have made a claim under the Workmen's Compensation Act and that the wife of the deceased was also made party to the said claim.

7. The tribunal below also met with the said contention and held that merely because a claim is pending under the Workmen's Compensation Act, this claim need not be dismissed. However, it can be observed that the amount, if any, granted in the claim petition filed under the Workmen's Compensation Act, can be deducted from the award passed by the tribunal if supported by law.

The civil miscellaneous appeal is allowed in part with the above modification and observation. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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T. RAJANI, J

March 24, 2017
DSK