THE HONOURABLE JUSTICE SMT. T. RAJANI

MACMA. No.764 of 2008

JUDGMENT:

This appeal is directed against the order dated 07.01.2008 of VIII Additional District Judge, at Nizamabad made in O.P.No.1390 of 2004 on the grounds that the lower Court ought to have granted Rs.10,00,000/- (Rupees ten lakhs only) towards compensation with 24% interest and ought to have applied 20 as multiplier and ought to have seen that the deceased was working as Constable and was earning Rs.10,000/- (Rupees ten thousand only) per month. The lower Court erred in taking the income of the deceased as Rs.4,400/- (Rupees four thousand and four hundred only). The age of the deceased was taken as 26 years and same is not disputed. The deceased was working as Constable and was earning Rs.26,000/- (Rupees twenty six thousand only) as per the averments of the petition. The lower Court considered the age of the deceased as mentioned in the inquest report, which is 30 years and adopted multiplier by following the ruling of the Apex Court in **TAMILNADU STATE TRANSPORT CORPORATION LIMITED Vs. S.S. RAJA PRIYA**[1] by considering that the multiplier prescribed under Second Schedule of the Motor Vehicles Act, 1988 (for short 'the Act') cannot be adopted as income of the deceased is in excess of Rs.40,000/- (Rupees forty thousand only), which is limited under the Second Schedule of the Act. The income of the deceased was taken as Rs.4,400/- (Rupees four thousand and four hundred only) per month by considering Ex.A-6, salary certificate,which shows the salary of the deceased as Rs.4,400/- (Rupees four thousand and four hundred only) per month.

1 2005 ACJ 1441 (SC)

The counsel for the appellant mainly argued on the multiplier and contended that the multiplier as prescribed by the Second Schedule of the Act can be adopted. This Court finds force in the said contention, as it is supported by the ruling of the Apex Court in **Sarala Varma Vs. Delhi Transport Corporation**[2] in Civil Appeal No.3483 of 2008 wherein it was held that the Second Schedule contains table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes up to 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-, by applying the formula. Hence, there cannot be any embargo in applying the multiplier prescribed under Second Schedule of the Act even for a person earning more than Rs.40,000/-.

The salary certificate of the deceased Ex.A6, shows the salary of the deceased as Rs.4,416/- (Rupees four thousand four hundred and sixteen only) and the deductions shown are only statutory deductions hence, the income taken by the lower Court as Rs.4,400/- (Rupees four thousand four hundred) by rounding off to the nearest figure, need not be found fault with. By considering the flaws in the Second Schedule of the Act, the Apex Court in Sarala varma's case has

2 (2009) 6 SCC 121

specified the multiplier relevant for different age groups and multiplier relevant for age group 30 would be 17, as per the same. Hence after deducting 1/3 from Rs.4,440/- (Rupees four thousand four hundred forty only) the loss of monthly income would be Rs.2,973/- (Rupees two thousand nine hundred seventy three only) and the loss of annual income would be Rs.35,676/- (Rupees thirty five thousand six hundred seventy six only), which is to be multiplied by 17, which is multiplier relevant for the age of the deceased. Thus, Rs.35,676x17=Rs.6,06,492/- (Rupees six lakhs six thousand four ninety two only) would be the loss of future income to the appellant and the said amount can be substituted in the place of Rs.5,28,000/- (Rupees five lakhs twenty eight thousand only), which was awarded by the lower Court towards loss of dependency. The rest of the award can be sustained.

The interest awarded by the lower Court needs no interference as it is on par with the prevailing rate of interest of Nationalised banks.

With the above, this appeal is partly allowed.

As a sequel, miscellaneous petitions, if any, stand closed. There shall be no order as to costs.

JUSTICE SMT.T.RAJANI

Date: 01-02-2017
LSK