SMT JUSTICE T. RAJANI

MACMA Nos.730 and 2441 of 2011

COMMON JUDGMENT:

MACMA No.730 of 2011:

When the matter is taken up for hearing on 05.12.2017, as none appeared, it was directed to be listed under the caption 'For Dismissal'. Even today, when the matter is taken up for hearing, neither the appellant appears nor there is any representation on its behalf.

The civil miscellaneous appeal is dismissed for default.

MACMA No.2441 of 2011:

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.361 of 2007 dated 06.07.2009 on the grounds that the Court below did not award adequate compensation and it erred in taking the income of the deceased properly.

2. Heard the counsel for the appellants. None appears for the respondent-insurance company.

3. A perusal of the judgment of the Court below would show that the income of the deceased, who was stated to be a mason, was taken as Rs.3,000/- per month.

4. The counsel for the appellant now relies on a decision of the Supreme Court in RAMACHANDRAPPA v. MANGAER, ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.[1] wherein it was held that Rs.4,500/- can be taken as the income of a coolie in the absence of any evidence. Hence, following the aforesaid decision, Rs.4,500/- can be taken as the income of the claimant in this case also.

5. The counsel for the appellants also relies 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 26 years, the future hike has to be 40% as per the said decision and the standardized income would come to Rs.6,300/-. The counsel also relied on a decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] to support his contention that deduction towards personal expenditure has to be 1/4 as the claimants are five in number.

6. Hence, taking the said future hike into consideration and personal deduction at 1/4 , the monthly income of the deceased comes to Rs.4,500/- + (Rs.4,500/- x 40% = Rs.1,800/-) = (Rs.6,300/- x 1/4 = Rs.1,575/-) i.e. Rs.6,300/- - Rs.1,575/- = Rs.4,725/- and the annual income comes to Rs.4,725/- x 12 = Rs.56,700/-. The multiplier relevant for the age of the claimant, which is 26 years, is ‘17’ as per the decision of the Supreme Court in SARLA VERMA’s case

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[1] 2011 ACJ 2436
[2] (2009) 6 SCC 121

(2 supra). Hence, the loss of future income to the claimants would come to Rs.56,700/- x 17 = Rs.9,63,900/-. Apart from the above, Rs.40,000/- is awarded to the first claimant under the head loss of consortium, Rs.15,000/- is awarded under the head loss of estate and Rs.15,000/- is awarded under the head funeral expenses as per the decision in PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of Rs.9,63,900/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.10,33,900/-. The amount of Rs.5,000/- awarded towards medical expenses has also to be included, then the compensation would come to Rs.10,38,900/-. The said amount is substituted in the place of Rs.4,44,000/- awarded by the Court below. 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.

10. Hence, the award of the Court below is modified as indicated above, with proportionate costs. The apportionment of compensation shall be made in terms of the apportionment 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.

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

In the result, MACMA.No.730 of 2011 is dismissed for default and MACMA.No.2441 of 2011 is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

December 11, 2017

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