THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A. No.2057 OF 2014

JUDGMENT:

This appellants/claimants have preferred the miscellaneous appeal assailing the award, dated 06.04.2010, passed in O.P.No.1185 of 2008, on the file of the Court of the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad, whereby the learned Judge partly allowed the petition and granted an amount of Rs.12,48,000/- towards loss of dependency, Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of estate of the deceased, Rs.20,000/- for the loss of consortium to the first petitioner and Rs.8,000 towards medical expenses, and thus, in total an amount of Rs.12,88,000/- was awarded towards compensation.

The main contention on behalf of the appellants/claimants is that the Court below erred in not taking the loss of future prospects into consideration and quantified the annual income of the deceased at Rs.1,44,000/-, after deducting one-third towards personal expenses, has fixed amount at Rs.96,000/- and applying the multiplier 13, arrived at Rs.12,48,000/- for loss of dependency.

The learned counsel for the appellants/claimants placed reliance on the decision of the Hon'ble Supreme Court in **Munna Lal Jain vs. Vipin Kumar Sharma** (Civil Appeal No.4497 of 2013, dated 15.05.2015), and submitted that the deceased was an entrepreneur having established small scale industry and his untimely death has resulted in the business being adversely affected. In **Munna Lal Jain vs. Vipin Kumar Sharma** (supra), the Supreme Court after taking into consideration the **Rajesh vs. Rajbir Singh**[1], observed as under (paragraph 11).

> 8. Since the Court in **Santosh Devi vs. National Insurance Company Limited** ((2012) 6 SCC 421, actually intended to follow the principle in the case of salaried persons as laid down in **Sarla Verma**

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[1] (2013) 9 SCC 54

> **vs. Delhi Transport Corporation ((2009) 6 SCC 121**, and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be the income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

In that view of the matter, taking into consideration the facts of the case, it is held that the learned Tribunal erred in not taking into consideration the loss of future prospects and as per the age of the deceased, 30% has to be added towards loss of future prospects and if that is taken into consideration, the annual income of the deceased has to be fixed at Rs.1,44,000/- + Rs.43,200 towards 30% of loss of future prospects and it comes to Rs.1,87,200/- and from that, one-third has to be deducted towards personal expenses and as such, Rs.62,400/- is deducted from Rs.1,87,200/-, then it comes to Rs.1,24,800/-, which is to be multiplied by multiplier 13 and total amount comes to Rs.16,22,400/-. Hence, an amount of Rs.16,22,400/- is granted towards loss of dependency as against Rs.12,48,000/- granted by the learned Tribunal. Except this modification, I see no reasons to interfere with the award passed by the Court below.

The miscellaneous appeal is accordingly partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.K.JAISWAL

21.02.2017
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