

SMT. JUSTICE T.RAJANI

MACMA. No.2763 of 2006

And

Cross Objections No.7743 of 2007

JUDGMENT:

This appeal is preferred by the appellant, New India Assurance Company Limited, who is 2nd respondent before the Court below, while the Cross Objections are preferred by the claimants.

The award that is assailed by both the parties is that of the III Additional District Judge, Kurnool at Nandyal passed in O.P. No.314 of 2004 on 27.09.2006.

The appellant herein preferred the present appeal on the grounds that the Court below failed to see that the vehicle should be used only for agriculture purpose and in this case as it was used for other purpose, the Insurance Company cannot be made liable for payment of any compensation; the Court below also failed to see that the award is on high side and is liable to be reduced.

In the Cross Objections, the claimants contend that the Court below ought to have taken the income of the deceased in the least as Rs.100/- per day but the Court below took Rs.60/- per day as the income of the deceased; the Court below also failed to see that the claimants would be entitled to pecuniary and non-pecuniary damages over and above what was granted by the Court below.

Heard the learned counsel for the appellant and the learned counsel for the Cross Objectors and perused the material on record.

The contention of the learned counsel for the appellant with regard to the tractor being used for commercial purpose is dealt with by the Court below in the right perspective. The crime vehicle was driven by its driver for loading sand and hence the Court below opined that it is for

agriculture purpose. The appellant herein does not put forward any material on the basis of which a conclusion that the crime vehicle being used for commercial purpose, can be drawn. Hence, no additional material being provided, there can be no reason to defer with the opinion of the Court below.

With regard to Rs.60/- per day being taken as the income of the deceased, by the Court below, the learned counsel for the claimants contend that the deceased was aged 43 years and he was working as cutter in sawmill. He also contend that even for a woman, the law stands well settled that Rs.3,000/- can be taken as loss of service or income, per month, as the case may be.

The learned counsel for the appellant herein does not put forth any cogent resistance with regard to the submissions made by the learned counsel for the claimants. Hence, Rs.3,000/- can be taken as the monthly income of the deceased. The claimants are four in number. Hence, following the ruling of the Apex Court in the case of **SARALA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER**¹ 1/4th should be deducted from the earnings of the deceased, which makes the monthly loss of income to the claimants as Rs.2,250/- and annual loss would be Rs.27,000/-.

The learned counsel for the appellant contends that the multiplier relevant for the age of the deceased is 14 but the Court below has erroneously taken it as 15 and the same needs to be corrected. The said contention is made with the help of the ruling of the apex court in SARLA VERMA'S case (one supra). Hence, Rs.27000 x 14 = Rs.3,78,000 should be the award amount.

When the learned counsel for the appellant herein contended that the awarded amount can be restricted to the claim amount, the counsel for the claimants while placing reliance in the case of **JITENDRA KHIMSHANKAR TRIVEDI AND OTHERS v. KASAM DAUD KUMBHAR AND OTHERS**² submitted that therein it was observed that the power of the Courts in awarding reasonable compensation was emphasized by the Court in **NAGAPPA v. GURUDAYA SINGH**³, **ORIENTAL INSURANCE CO. LTD. v. MOHD. NASIR**⁴ and **NINGAMMA v. UNITED INDIANSURANCE CO. LTD.**⁵. It was further observed that even in case no appeal is filed by the claimants it is obligatory on the part of Courts to award just and reasonable compensation.

As regards the contention of the learned counsel for the claimants that the amounts should be awarded towards consortium based on the ruling of the Apex Court in the case of **RAJESH v. RAJBIR SINGH**⁶ wherein the Court has awarded substantial amount of Rs.1,00,000/- towards loss of consortium, the learned counsel for the appellant placed reliance on the case of **RAMILABEN CHINUBHAI PARMAR AND OTHERS v. NATIONAL INSURANCE COMPANY AND OTHERS**⁷, which is made by three judges of the Supreme Court wherein Rs.50,000/- was granted as conventional amount. There is no resistance offered by the counsel for the cross objectors, for the said submission. Hence, taking into consideration the citations placed by the learned counsel on either side, I deem it appropriate in the instant case to grant another Rs.50,000/- as conventional amount. Then the total compensation would be Rs.4,28,000/- (3,78,000 + 50,000).

2 (2015) 4 Supreme Court Cases 237
3 (2003) 2 SCC 274
4 (2009) 6 SCC 280
5 (2009) 13 SCC 710
6 (2013) 9 SCC 54
7 (2014) 15 Supreme Court Cases 722

The claimants shall pay requisite differential Court fee on the enhanced compensation.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

In the result, the appeal is dismissed and the Cross Objections is allowed with proportionate costs.

JUSTICE T.RAJANI

Date: 14.07.2017
LSK

