

SMT JUSTICE T. RAJANI

MACMA.No.35 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the I Additional District Judge, Anantapur, in O.P.No.152 of 2006 dated 17.09.2007 on the grounds that the Court below awarded inadequate compensation.

2. Heard both the counsel.

3. The facts of the case are that the deceased, who died in the motor accident, was aged 8 years. The claim of the appellants is Rs.2,30,000/-. The Court below, without taking up the calculation of compensation on the scientific basis, awarded Rs.75,000/- in lumpsum. The Court below relied on a ruling of the High Court of Rajasthan in **Bhanwar Lal v. Deval¹** wherein while dealing with the claim for compensation for the death of a boy aged 7 years, the Rajasthan High Court applied the multiplier of '15' by taking the notional income of Rs.15,000/- per annum and awarded Rs.2,25,000/-, but it did not follow the said ruling. It considered the ruling of the Apex Court in **New India Assurance Co. Ltd., v. Satender²** wherein it was observed that in cases of young children of

¹ 2007 (1) An.W.R 74

² 2007 (1) An.W.R 25

tender age, neither their income at the time of death nor the prospects of future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis and chose to award a lumpsum compensation of Rs.75,000/-. The Court below also relied on the decision of the Apex Court in **Lata Wadhwa v. State of Bihar**³ while awarding lumpsum compensation.

4. Learned counsel for the appellants, however, relies on a ruling of the Apex Court reported in **Kishan Gopal v. Lala**⁴ wherein at paragraph 39 of the judgment, the Apex Court held that it would be just and reasonable to take the notional income at Rs.30,000/- per annum and multiplier at '15' and awarded Rs.4,50,000/- apart from Rs.50,000/- under conventional heads towards loss of love and affection, funeral expenses etc. The Apex Court did not make any deduction towards personal expenditure of the deceased. Hence, following the said ruling, the compensation in this case is also to be Rs.5,00,000/-, since the ages of the deceased in this case and in the case dealt with by the Apex Court is almost same, being 8 and 10 years respectively.

5. Learned counsel for the second respondent contends that the deceased was stated to be a L.K.G student. Hence, the age of the deceased cannot be accepted to be 8 years, as

³ 2001 (8) SCC 197

⁴ (2014) 1 Supreme Court Cases 244

students would be admitted into L.K.G at the age of 4 or 5 years. But, Ex.A.3- post-mortem report of the deceased shows the age of the deceased as 8 years. Hence, the said contention cannot be accepted.

6. Learned counsel for the appellants further relies on the ruling of the Apex Court in **Rajesh and others v. Rajbir Singh and others**⁵, and prays to award the entire compensation arrived at.

7. Hence, following the said ruling, a sum of Rs.5,00,000/- (Rupees five lakhs only) is awarded as compensation. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

8. The appellants are directed to pay Court fee on the excess amount granted by this Court than the amount claimed by them, within a period of three (3) months from today.

9. The Appeal is accordingly allowed with proportionate costs. As a sequel, the miscellaneous applications, if any, shall stand closed.

T. RAJANI, J

Date: 23.10.2017
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⁵ 2013ACJ1403 = 2013(4)ALT35