

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.407 of 2008

Date : 04-08-2017

Between:

R. Lavanya

... Petitioner.

And

M. Issak and others.

... Respondents



THE HON'BLE SMT JUSTICE T.RAJANI

MACMA No.407 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the first petitioner before the Court below and wife of the deceased. The other petitioners 2 to 5, who are the parents and the brother and sister of the deceased, were shown as respondents and O.P., against respondents 1, 3 & 4 was dismissed for default. The main ground on which the appeal is preferred is that inadequate compensation was awarded by the Court below and that income taken by the Court below was only Rs.1,500/- per month instead of Rs.2,000/- per month.

2. Heard the learned counsel for the appellant and learned counsel for the respondents remained absent.

3. A perusal of the judgment of the Court below shows that the income of the deceased, who was stated to be a driver was taken as Rs.15,000/- per annum but not Rs.1,500/- per month as urged in the grounds. The reason for taking only notional income of the deceased in spite of his testimony being that he was earning Rs.150/- per day is the evidence of P.W.2, who stated that the deceased was not working as auto driver at any time and that he was only going now and then to distribute papers. Now the counsel for the appellant contends that the reasons for P.W.2 stating as such are not known, but he does not put forth any argument to disbelieve the evidence of P.W.2, who is the witness of the claimants themselves. If there had been no evidence with regard to the income of the deceased, perhaps it could have been assumed that he being hale and healthy, might have been earning at least Rs.3,000/- per month on par with any

other hale and healthy person. But now we have a positive evidence coming from the mouth of P.W.2, who is the witness on behalf of the claimants, that the deceased, who claims to be a driver, never worked as a driver and that even the paper distribution which is stated to being alone by him is being done now and then. The said evidence would reflect the inclination of the deceased not to take up serious work. Hence, in the light of the said evidence, I do not see any reason to interfere with the notional income that was taken by the Court below. But, however, the contention of the appellant's counsel with regard to the deduction made towards the personal expenditure of the deceased, this Court is in acceptance with the same, as in **SARALA VERMA's** case, the Hon'ble Apex Court laid down that in case the dependants are more than 4 in number, the deduction that has to be made is only $1/4^{\text{th}}$ of the income of the deceased. After deducting $1/4^{\text{th}}$, the loss of annual income to the claimants would be Rs.11,250/- as against Rs.10,000/- that is arrived at by the Court below. The multiplier that was taken before the Court below as '17', needs to be revised as, as per **SARALA VERMA's** case, the multiplier that has to be taken for the age group of 20 to 25 years is '18'. Hence, the age of the deceased being 20 years, multiplier '18' would be appropriate for arriving at the compensation amount. Then, Rs.11,250/- x '18' = comes to Rs.2,02,500/-. The counsel contends that the Court below did not award consortium adequately. Going by the dicta of the above ruling, Rs.1,00,000/- is awarded towards loss of consortium to the claimant. So also with regard to the funeral expenses, the Hon'ble Supreme Court ruled that Rs.25,000/- should be awarded. Hence, the total award amount comes to Rs.3,27,500/-, which is restricted to Rs.3,00,000/- which is the amount claimed by the claimants. The apportionment of the compensation shall be done

in the same proportion as was directed to be done by the Court below between the claimant and respondents 3 to 6. The enhancement amount shall carry interest at the rate specified and from the time indicated by the Court below.

4. In the result, the appeal is allowed with proportionate costs.
5. A sequel miscellaneous petitions, if any pending in this appeal, shall stand closed.

JUSTICE T. RAJANI

Date: 04-08-2017.
mrb

