SMT. JUSTICE T.RAJANI

MACMA. No.2425 of 2008

JUDGMENT:

This appeal is preferred by the appellant, National Insurance Company Limited, who is the 2nd respondent before the Court below, questioning the order of the V Additional District Judge, Karimnagar passed in O.P. No.486 of 2005 on 30.10.2006, on the grounds that the Court below erred in applying the excessive multiplier; erred in not considering that the respondents 1 to 4 are the legal heirs claiming to be the dependents of the deceased and the respondents 5 and 6, who are the parents of the deceased were not wholly dependent on the deceased; the Court below having accepted that the deceased was not having fixed income and was getting wages on the principle of no work no pay did not have jurisdiction to assume that the deceased would have earned a fixed income and further erred in coming to the conclusion on the basis of salary certificate and failed to note that no employer was examined to prove the employment.

Heard the learned counsel on either side and perused the material on record.

The appellant's counsel only harped on the method of computation of the income of the deceased. He vehemently contends that the evidence of P.W.3 that the salary of the deceased is based on the principle of no work no pay has to be construed in a manner, overthrowing the contents of Ex.A-1, salary certificate. He also contends that Ex.A-1, salary certificate, pertains to only one month and in the light of the evidence of P.W.3 that the salary is based on no work no pay, the said salary certificate which reflects the salary of only one month cannot be taken as reflecting the salary pertaining to all the months of work of the deceased. My experience in dealing with the motor vehicle claims shows that a straight jacket formula cannot be adopted in assessing the income of the deceased, when there is no proper evidence. Instances where absolutely no proof of income comes before the Court are more than the instances where the salary or the income of the deceased is proved. The Courts have been adopting a method of making a guess work depending on the other circumstances of the case and also depending on the potential of the deceased to make earnings, like his age, health etc. In the light of the said history of practice, the plea of the appellant's counsel to make a meticulous evaluation of A-1 salary certificate cannot be appreciated. The salary certificate and the evidence of P.W.3 would reflect one thing i.e. that the deceased has been working as coal filler in SCCL since 1991 till his death. The long tenure of the deceased would show that though he was not made a permanent employee, he was on the roles without any break in service. The details of salary reflected in Ex.A-1 would show that there was available work for the deceased to get a salary as shown therein. It is not the case of the appellant that the employment is a seasonal employment. The facts elicited in the very brief cross examination of P.W.3 cannot be pitted against the above factors, which go to show that the deceased was in continuous employment of SCCL and that he was drawing wages around Rs.10,000/-. In fact, the Court below has taken into consideration all the grounds now raised in the appeal and was inclined to take only the net salary of the deceased, which was Rs.6,740/-. The deductions of Rs.3,452/- having been considered as not explained, were deducted from the salary of the deceased. The deductions were accepted also on the ground that the appellant was on the basis of no work no pay and that the nature of the services of the deceased are temporary. As the law stands on today, it is the gross salary minus the professional tax that has to be taken.

The deductions from the salary, made towards the personal expenses of the deceased was 1/3rd though the dependents are as many as six. If, we have to decide the amount of compensation now, the said deduction has to be only $1/4^{th}$ as per ***SARALA VERMA Vs. DELHI TRANSPORT CORPORATION[1].*** Hence, the deduction of $1/3^{rd}$ towards personal expenditure and the adoption of net salary for arriving at the loss of income would take care of the grievance of the appellant herein, if any. Hence, I absolutely feel no necessity to interfere with the order of the Court below and this appeal is liable to be dismissed and accordingly, is dismissed. There shall be no order as to costs.

JUSTICE T.RAJANI

Date: 15.09.2017
LSK

1 2009 ACJ 1298 (SC)