THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA.Nos. 992 of 2007 & 802 of 2012

COMMON JUDGMENT:

These two appeals are preferred by the Insurance Company and the claimants respectively, assailing the Order of the III Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.977 of 2004, dated 03.11.2006. Hence, they are disposed of together by this common judgment.

2. The Insurance Company preferred the appeal on the ground that the Court below took the gross income of the deceased, while it is the net income that is to be taken for determining the compensation as per the judgment of the Supreme Court in *New India Assurance Company Limited v. Asha Rani & Others* [1].

3. Heard the learned counsel appearing for both the parties.

4. The counsel for the appellant/Insurance Company contends that as per the judgment of the Supreme Court (1 supra) the income that is to be taken is the net income and not the gross income of the deceased. On the other hand, the learned counsel for the claimants relies upon a judgment of the Supreme Court in *Sarla Verma & Others v. Delhi Transport Corporation & Another*[2] and few other rulings, which followed *Sarla Verma*'s

[1] (2003) 2 SCC 223
[2] (2009) 6 SCC 121

case (2 supra), stating that gross income of the deceased is to be taken while computing the compensation.

5. The learned counsel for the Insurance Company further contends that the income of the deceased taken by the lower Court at Rs.5,000/- per month is also exorbitant. But the judgment of the lower Court shows that the monthly income of the deceased was fixed at Rs.5,000/- after considering the evidence of PW-3 and Ex.A.6, which reflected the income of the deceased, and as there was no reason to disbelieve the same.

6. Hence, in view of the above, there is no error on the part of the lower Court in taking the income which is reflected in Ex.A-6. Hence, the appeal filed by the Insurance Company fails and is liable to be dismissed.

7. Insofar as the appeal filed by the claimants, vide MACMA.No.802 of 2012 is concerned, the claimants preferred the appeal on the grounds that the Court below made a deduction of 1/3rd instead of 1/5th, though the petitioners are five in number; the Court below did not award adequate compensation towards funeral expenses and other heads, and did not consider the future prospects of the deceased.

8. The learned counsel appearing for the claimants relies on the ruling of a Constitutional Bench of the Supreme Court in

National Insurance Company Limited v. Pranay Sethi and Ors.[3] and contends that the future hike in the salary of the deceased would be 50% as he was undisputedly holding a permanent job. There can be no dispute with the said contention as the said ruling is to the said effect, and therefore Rs.7,500/- per month would be the standardized income of the deceased and thus Rs.90,000/- should be taken as the annual income of the deceased. The claimants are five in number. Hence, as per *Sarla Verma*'s case (2 supra) 1/4th is to be the deduction towards personal expenses of the deceased and the loss of his future income then, would be Rs.67,500/- per annum. Further, the multiplier that was adopted by the lower Court was '16' as laid down in *Bhagwandas v. Mohd Arif*[4] . But, now the law is settled by *Sarla Verma*'s case (2 supra) as regards the multipliers, and for the age of the deceased, which was 31 years at the time of his death, the relevant multiplier is '17'. Hence, the annual income of the deceased at Rs.67,500/-, multiplied by 17, comes to Rs.11,47,500/-. Apart from the above, following the judgment of the Constitutional Bench, an amount of Rs.40,000/- is to be awarded towards the loss of consortium to the 1st petitioner; Rs.15,000/- towards loss of estate, and Rs.15,000/- towards funeral expenses is awarded. Thereby, the total compensation comes to Rs.12,17,500/-.

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[3] Spl.Leave Petition (Civil) No.25590 of 2014, dt.31.10.2017
[4] AIR 1988 AP 99

9. Originally, the claimants/appellants claimed a compensation of Rs.8,00,000/-, but later in the appeal an amendment petition was filed claiming Rs.16,00,000/-, and the same was allowed by this Court. Hence, in view of the same, the total compensation awarded at Rs.12,17,500/- is proper and reasonable. However, the differential Court fee shall be paid by the claimants. This 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.

A Memo is filed by the Claimants/Appellants 1 to 3 & 5 stating that Appellant No.4 in MACMA No.802 of 2012 died and his legal heirs are already on record.

10. In the result, the appeal – MACMA No.992 of 2007 filed by the Insurance Company is dismissed, and the appeal – MACMA No.802 of 2012 filed by the Claimants is partly allowed with proportionate costs, by setting aside the judgment of the lower Court, to the extent indicated above. As a sequel, the miscellaneous applications pending, if any, in both the appeals, shall stand closed.

T.RAJANI, J

28th November, 2017
Kv

THE HON'BLE SMT. JUSTICE T.RAJANI

<u>MACMA.Nos. 992 of 2007 & 802 of 2012</u>

<u>COMMON JUDGMENT</u>

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Kv