SMT JUSTICE T. RAJANI

MACMA.No.179 of 2008

JUDGMENT:

This appeal is preferred by the insurance company, which is respondent No.4 before the tribunal below, assailing the award of the II Additional Chief Judge, City Civil Court, Hyderabad in OP.No.2320 of 2004 dated 21.01.2006 mainly on the ground of negligence and quantum of compensation.

2. At the hearing, counsel for the appellant does not press for the grounds raised in the appeal with regard to the fastening of liability on APSRTC, which is the hirer of the crime bus. Learned counsel with regard to negligence contends that the deceased was aged only 16 years and did not have driving licence and that the above circumstances would clearly depict negligence on the part of the deceased. But, unfortunately, no such contention was raised either in the counter filed by the insurance company before the tribunal or while submitting arguments before the tribunal. At this stage, the said contention cannot be allowed to be raised without there being a pleading in that regard.

3. The next contention is with regard to the income that was taken by the tribunal. The tribunal, while discussing about the income of the deceased under issue No.2, observed that the claim of the claimants is that the deceased was earning only Rs.2,000/- per month by running private tuitions at his house. But, strangely, the tribunal assumed the income of the deceased to be Rs.36,000/- per annum by drawing

parity to the income of a house wife, which was discussed by the Supreme Court in *LATA WADHWA v. STATE OF BIHAR* [2001 ACJ 1735]. When the very claim of the claimants is that the deceased was earning Rs.2,000/-, the approach of the tribunal in assuming higher income is completely far from reason. Hence, as there is no serious argument extended with regard to the income of the deceased, being Rs.2,000/- per month, the same can be taken as his income. The deceased being a bachelor, 50% of the said income has to be deducted towards personal expenditure which is the ratio of the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1]. Thus, the loss of monthly income would be Rs.1,000/- and that of annual income would be Rs.12,000/-.

4. Learned counsel for the claimants, with respect to adopting multiplier, submitted that the multiplier relevant for the age of the deceased has to be taken by following the ratio of the Supreme Court in MUNNA LAL JAIN v. VIPIN KUMAR SHARMA[2], wherein the three judge bench was in full agreement with the decision of the Supreme Court in SARLA VERMA's case (1 supra) that in the case of death claim the multiplier to be applied is with reference to the age of the deceased only and as such, in the present case, '18' would be relevant multiplier for the age of the deceased.

5. Thus, the claimants are entitled to compensation of Rs.2,16,000/- towards loss of dependency, which is calculated as follows: Rs.12,000/- x 18 = Rs.2,16,000/-. The said amount is substituted for the amount of Rs.4,68,000/- arrived at by the tribunal

[1] (2009) 6 SCC 121
[2] (2015) 6 SCC 347

towards loss of dependency. The plea with regard to interest at 9% per annum being on the higher side cannot be considered as there is no evidence lead with regard to the then prevailing bank rates of interest.

6. In the result, the compensation awarded by the tribunal towards loss of dependency is reduced from Rs.4,68,000/- to Rs.2,16,000/- with proportionate costs. The amounts awarded under other heads shall remain unaltered. This award shall relate back to the date of decree and the compensation amount shall carry interest at the rate specified and from the time indicated in the award by the tribunal below.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

____
T. RAJANI, J

April 7, 2017
DSK