SMT JUSTICE T.RAJANI

M.A.C.M.A.No.2468 of 2008
and
Cross Objections (SR).No.12445 of 2012

COMMON JUDGMENT:

This appeal is preferred by the appellant, who is the insurer and respondent before the court below, assailing the judgment of the Chief Judge, City Civil Court, Hyderabad, in O.P.No.1576 of 2005 dated 01.06.2007 on the grounds that the income of Rs.5,000/- per month, taken by the court below, is erroneous, as the deceased was a student at the time of accident and there is no evidence or material before the court below to decide the income of the deceased as Rs.5,000/- per month and the multiplier is also wrongly applied; the Tribunal erred in deducting 1/3rd towards personal expenses of the deceased, who is unmarried.

The claimants have also come before this Court by way of cross-objections, disputing the adequacy of compensation granted by the lower court. They also dispute the multiplier.

Heard both the counsel.

A perusal of the judgment goes to show that the court below disbelieved the evidence of the claimants that the deceased was earning Rs.16,413/- per month. PW.3, who was a classmate of the deceased, was examined to speak about the income of the deceased but his evidence was eschewed as he did not turn up for cross-examination. But, however, the Court below considering the evidence of PW.3 arrived at a conclusion that the income of the deceased would be Rs.5,000/- per month.

The counsel for cross-objectors takes the help of ruling of the Division Bench of this Court reported in *B.RAMULAMMA Vs. VENKATESH BUS UNION, LINGARAJAPURAM, BANGALORE AND ANOTHER*[1], wherein in a similar case, the Division Bench took the income of the deceased as Rs.12,000/- per month. Similar to this case, the deceased in that case was also a B-Tech Graduate. Hence, there can be no reason to adopt different approach in this Case, which is almost similar to the facts decided by the Hon'ble Division Bench. But, however, the deduction towards personal expenditure of the deceased should be 50% as held by the Division Bench in the above case. Then Rs.6,000/- would be the loss of monthly income and Rs.72,000/- (Rs.6,000/- x 12) would be loss of annual income to the claimants. So also, the multiplier that was adopted by the lower court is erroneous as the law now settled is that the multiplier relevant for the age of the deceased has to be taken into consideration. The age of the deceased is stated to be 22 years and as per *SARLA VERMA v. DELHI TRANSPORT CORPORATION*[2], the multiplier relevant for the age of the deceased is '18'. When the said multiplier is applied, loss of

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[1] 2009 (6) ALD 684 (DB)
[2] (2009) 6 SCC 121

dependency would come to Rs.12,96,000/- (72,000 X18). The claim of claimants is only Rs.8,00,000/-. The awarded amount exceeds the claim amount. But, however, the Constitution Bench of this Court in a ruling reported in *ADAM INDUR MUTTEMMA Vs. RATHOD REDDIA AND OTHERS*[3] overruled the earlier law laid by the Division Bench of this Court in *NEW INDIA ASSURANCE COMPANY LIMITED Vs. CHINTNALA*[4] that the Tribunal is not empowered to award higher compensation than the compensation claimed by the claimants and took a contrary view and held that the awarded amount can exceed the claim amount. The Full Bench has also taken into consideration the earlier case law on the said aspect. Hence, the claimants are entitled for a sum of Rs.12,96,000/- instead of Rs.6,70,000/- awarded by the court below. The claimants shall pay court fee on the differential amount. The enhanced amount shall carry interest at the rate specified and from the time fixed by the lower court.

The appeal is dismissed and the cross objections are allowed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

SMT JUSTICE T.RAJANI

Dt: 15.09.2017
Prv

[3] 2015 (4) ALD 585 (LB)
[4] 2002 (3) ALT 194 (DB)

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Prv