THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.2272 of 2006

Date : 04-08-2017

Between:

The National Insurance Co.ltd.,
Begum Bazar, Hyderabad
Rep by its Branch Manager,
Regional Office, 86, Sreenidhi,
Opp: Taj Mahal Hotel, SD Road,
Secunderabad – 500003.

... Petitioner.

And

Meenukuri Manjula and others.

... Respondents

THE HON'BLE SMT JUSTICE T.RAJANI

MACMA No.2272 of 2006

JUDGMENT:

This appeal is preferred by the appellant/1st respondent-National Insurance Company assailing the judgment of the I Additional District Judge, Nizamabad, dated 25-10-2005 in O.P.No.303 of 2001 on the grounds that the Court below ought to have seen that the claimants have not filed the driving licence of the driver of the crime vehicle and dismissed the claim of the claimants; it ought to have appreciated that the claimants failed to prove the contents of Exs.A1 & A2; the Court below ought to have appreciated that net salary of the deceased has to be taken as per the ruling reported in *MANGALI PARVATHAMMA vs. P. YADAIAH (2004 ACJ 448);* the lower Court was not justified in adopting '17' multiplier and interest granted at the rate of 9% per annum is also exorbitant.

2. Heard the learned counsel appearing for the respondents-claimants. Learned counsel for the appellant-Insurance Company does not appear. But, he was heard on earlier occasion i.e., on 21-07-2017 and on that day, at the request of the respondents' counsel, the matter was posted to 28-07-2017 'for orders'.

3. The important grievance of the appellant is that net salary of the deceased ought to have been taken for computing compensation amount. But, the Court below took the gross salary of the deceased, which is erroneous. Multiplier adopted by the Court below is 17, which is ought to be '16' as per ***SARLA VERMA vs. DELHI TRANSPORT CORPORATION[1]'s*** case.

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[1] (2009 ACJ 1298 (SC))

4. Learned counsel for the respondents in answer to the contention with regard to the net salary being taken for computing compensation, relies on the ruling of the Apex Court reported in ***YERRAMMA AND OTHERS vs. G. KRISHNA MURTHY AND ANOTHER***[2], wherein it was held that the approach of the Tribunal therein in determining the salary of the deceased, after making deductions towards P.T and other statutory deductions is not proper. It was further held that net salary of the deceased taken by the Tribunal and the High Court therein is erroneous and is not in accordance with the principles laid down by the Apex Court. It was held that gross salary drawn by the deceased at the time of death has to be taken. Hence, the first contention of the counsel for the appellant gets defeated by virtue of the above ruling, which is the latest ruling on the said aspect.

5. The learned counsel for the appellant also raised contention with regard to the approach of the Court below in doubling the salary of the deceased. To repel the said contention, the respondents' counsel relied on a ruling of the Apex Court reported in ***VIMAL KANWAR AND OTHERS vs. KISHORE DAN AND OTHERS***[3] and contended that the future salary has to be doubled. The Apex Court in the above said ruling took double the salary of the deceased as a loss of future income to the claimants therein. The age of the deceased in that case is 28 years and in this case, it is 32 years. It was observed by the Apex Court that the deceased therein being 28 years 7½ months old and in the normal course, he would have served the State Government for 30 years by longevity of life and any human being can be taken as such. The Apex Court considered that, that was a fit case

[2] AIR 2015 SC 1145
[3] (2013) 7 SCC 476

for which 100% increase in the future income of the deceased can be taken. There is no reason to adopt a different approach in this case. The deceased is said to be Lineman in Electricity Department, which is a Government Department. Hence, the approach of the lower Court in doubling the salary of the deceased for computing the loss of future income to the claimants cannot be found fault with. Double salary of the deceased in this case comes to Rs.10,240/-. The Court below deducted one third of the income of the deceased towards personal expenses. The counsel for the respondents contends that it has to be one fourth as per ***SARLA VERMA***'s case, which cannot be disputed. After deducting one fourth from Rs.10,240/-, the loss of future income to the claimants would be Rs.7,680/- per month and Rs.92,160/- per annum. The contention of the appellant's counsel is that the multiplier taken as '17' has to be reduced to '16' as was laid down in ***SARLA VERMA***'s case. There is no contra contention made by the counsel for the respondents. Hence, Rs.92,160/- X 16 would come to Rs.14,74,560/-. The calculation made as above would result in enhancing the award made by the lower Court, towards loss of future income, from Rs.13,92,640/- to Rs.14,74,560/-.

6. Learned counsel for the respondents has a ready support of ruling of this Court made in MACMA No.5370 of 2008, wherein ruling of Apex Court reported in ***NAGAPPA vs. GURUDAYAL SINGH*** [4] was relied upon, which is to the effect that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases, where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than

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[4] **2003 ACJ 12 (SC)**

claimed, the Tribunal may pass such award and the Court is empowered to enhance the compensation at the appellate stage, even without the injured filing an appeal or cross-objections. Justification for enhancing the compensation without there being an appeal preferred by the claimants is drawn from the above ruling. Basing his support on the same ruling in ***VIMAL KANWAR'***s case, the counsel contends that the award needs to be enhanced with regard to compensation awarded towards loss of consortium to the 1st claimant and loss of love and affection for the mother and children and funeral expenses also. As per the above ruling, Rs.1,00,000/- has to be awarded to the respondent No.1 towards loss of consortium and similar amount to respondent No.2 for loss of love and affection and Rs.25,000/- is awarded towards funeral expenses.

7. The counsel for the respondents contends that interest granted at the rate of 9% should be directed to be carried for the enhanced amount also, but the counsel for the respondents contends that after demonetization, the rates of interest have gone down and the prevailing rate of interest is only 7% for senior citizens. Hence taking note of the said fact the interest @ 7% is awarded for the amount beyond the claimed amount, from the date of petition till the date of realization.

8. The appeal is disposed of in terms of the findings indicated above. No costs.

JUSTICE T. RAJANI

Date: 04-08-2017.
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