THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.933 of 2008

JUDGMENT:

This appeal is directed against the judgment of the District Judge, Karimnagar passed in O.P.No.271 of 2006 dated 10.01.2008 on the ground that the tribunal ought to have considered that the deceased was aged 28 years and was working as a cleaner in the lorry and that he died due to collision between two lorries and that the deceased was earning Rs.3,300/- per month. The OP was originally filed with a claim for Rs.3,00,000/- but subsequently the claim was enhanced to Rs.5,00,000/-. The other ground urged is that the tribunal ought to have considered that even under the second schedule of the Motor Vehicles Act, 1988 the maximum limit of annual income has been limited up to Rs.40,000/-. Hence, the income taken by the tribunal as Rs.15,000/- is contrary to law. The tribunal did not award any compensation towards loss of love and affection to the appellants.

2. Counsel for the appellants in support of his contention that the income taken by the tribunal is very meager relied on a decision of the Supreme Court in RAMACHANDRAPPA v. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.[1] Wherein the income of a coolie was taken as Rs.4,500/- per month. Learned counsel contended that the OP dealt with by the Supreme Court was also of the year 2004, hence, the same parameters can be adopted in this case.

3. It can be noticed that the income of the deceased, where there is no proof in that regard, was taken variously by the Supreme Court and High courts in various cases and usually Rs.3000/-

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[1] (2011) 13 SCC 236

per months is taken as the monthly income for labourers and those who have no proof of income. One such case can be cited as an example viz. LAXMI DEVI v. MOHAMMAD TABBAR[2] in Appeal (civil) 2090 of 2008. Hence this Court is inclined to take Rs.3,000/- as the income of the deceased.

4. With regard to the second schedule being applied to the cases beyond the income of Rs.40,000/-, the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[3] explains the same in the following words:

> "The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under section 163A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-."

5. The decision of this High Court in P. ANNAMMA v. N.N.A.PATRICK[4] can further be taken help of, wherein it was held in paras 21 and 22 as hereunder:-

> "21. Therefore, it is clear that the multiplier method is the legally well established method in granting compensation

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[2] 2008 ACJ 1488 = (2008) 12 SCC 165
[3] (2009) 6 SCC 121
[4] 2007 ACJ 830

and the Table given under the Second Schedule appended to the Act can be taken for guidance for applying the multiplier for claim petitions under section 166 of the Act, even for those whose annual income exceeds Rs.40,000/- per annum. Further, a learned single Judge of this court in K. Matura Bai v. A. Shiva Nageswar Rao, 2006 ACJ 1341 = 2004 (4) ALT 304 , considering the structured formula given in Bhagwan Das case, 1987 ACJ 1052 (AP), in the light of various judgments of the Supreme Court and the High Courts, held as here under:

18...Be it the case of assessment of compensation under section 163-A or assessment of the compensation under section 166, the multiplier in the structured formula as given in the Second Schedule appended to the Act being the statutory provision shall have to be followed. A fortiori the multiplier Table as given in Bhagwan Das case, 1987 ACJ 1052 (AP), having not been updated so far, there is no option for the Tribunal except to follow the statutory multiplier as given in the structured formula. Deviation is permissible from these multipliers as held by the judgments of the Apex Court only in proper cases and under compelling circumstances. The legal position thus appears to be obvious from the concatenation of the cases discussed hereinabove.

22. In view of the above judgments the contention of the counsel for the insurance company that the structured formula appended to the Act cannot be made applicable to the applications under section 166 of the Act and as the income is more than Rs.40,000/- is not tenable and the same is rejected and the issue framed in this regard is answered in the affirmative."

6. The above position of law makes it clear that multiplier method is the most scientific method for calculating the loss and that the second schedule of the act is not restricted in its application to cases file under Section 163-A of the Act and can as well be applied to cases under section 166 of the act and also that the income limit of

Rs.40,000/- is not an upper limit. But the decision in SARLA VERMA'S case (2 supra) observed the discrepancies and suggested the correct multipliers, in the following words:

> "There are however discrepancies/errors in the multiplier scale given in the Second Schedule Table. It prescribes a lesser compensation for cases where a higher multiplier of 18 is applicable and a larger compensation with reference to cases where a lesser multiplier of 15, 16, or 17 is applicable. From the quantum of compensation specified in the table, it is possible to infer that a clerical error has crept in the Schedule and the `multiplier' figures got wrongly typed as 15, 16, 17, 18, 17, 16, 15, 13, 11, 8, 5 & 5 instead of 20, 19, 18, 17, 16, 15, 14, 12, 10, 8, 6 and 5."

7. The age of the deceased is stated to be 28 years as on the date of accident, hence, multiplier relevant for his age as per the above ruling would be 17. 1/3rd of the income of the deceased has to be deducted towards his personal expenditure, which he would have incurred for himself. Thus, Rs.2,000/- would be the monthly income of the deceased and Rs.24,000/- would be his annual income. Hence, applying the multiplier 17, the dependency would work out to Rs.4,08,000/- as against Rs.1,70,000/- granted by the tribunal.

8. The tribunal did not award the compensation under the head loss of love to the second petitioner, for which he is entitled. Hence, Rs.5,000/- is awarded to the second appellant under the head love and affection. Hence, the award of the tribunal is modified and enhanced to an amount of Rs.4,13,000/-. This Court is not inclined to interfere with the rate of interest awarded by the tribunal as it is on par with the rate of interest awarded by nationalized banks.

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

T. RAJANI, J

February , 2017
DSK