SMT JUSTICE T. RAJANI

MACMA.No.2960 of 2011

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the V Metropolitan Sessions Judge, Hyderabad in OP.No.1262 of 2007 dated 30.07.2009 on the grounds that the Court below did not adopt appropriate multiplier for the age of the deceased, which is '13' and did not take the future prospects of the deceased into consideration and the deduction made towards personal expenditure is also not appropriate, as it should be only 1/5th considering the number of claimants, who are six in number.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that instead of adopting the multiplier as laid down in the Second Schedule of the Motor Vehicles Act, it adopted the multiplier following the decision of the Supreme Court in *BHAGAWANDAS v. NATIONAL INSURANCE CO. LTD.* [1990 ACJ 495]. The salary of the deceased was also taken, as reflected in the salary certificate Ex.A6, without considering further enhancement of the salary i.e. likely hike in future. The salary of the deceased, who is a Head Constable, as reflected in Ex.A6, is Rs.13,275/-.

4. The Supreme Court in its latest decision in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017) has laid down that 30% has to be taken as

future hike of the salary for a person aged between 40 - 50 years. After considering the hike of 30% in future (Rs.13,275/- x 30% = Rs.3982.50/-), the salary of the deceased comes to Rs.13,275 + Rs.3982/- = Rs.17,257/-. The Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1] laid down that deduction towards personal expenditure has to be 1/4th if the claimants are 4 to 6 in number. Thus, the loss of monthly income comes to Rs.17,257/- - Rs.17,257 x ¼ = Rs.4314/- = Rs.12,943/- and the loss of annual income comes to Rs.12,943/- x 12 = Rs.1,55,316/-. The multiplier relevant for the age of the deceased, which is 50, is '13' according to SARLA VERMA's case (1 supra). Hence, the loss of dependency comes to Rs.1,55,316/- x 13 = Rs.20,19,108/-. Apart from the above, Rs.40,000/- is awarded to the first claimant under the head loss of consortium, Rs.15,000/- is awarded under the head loss of estate and Rs.15,000/- is awarded under the head funeral expenses as per the decision in PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of Rs.20,19,108/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.20,89,108/-. However, the claim is made only for Rs.15,00,000/-.

5. The counsel for the appellants relies on a decision of the Supreme Court in NAGAPPA v. GURUDAYAL SINGH[2] wherein it was held that the compensation that is awarded to the claimants has to be just compensation and the compensation can exceed the claimant amount to support the contention that the award can exceed the claim.

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[1] (2009) 6 SCC 121
[2] (2003) 2 SCC 274

6. Hence, the claimants are entitled to total compensation of Rs.20,89,108/- with proportionate costs. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below. The claimants shall pay the differential Court fee.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

November 27, 2017
DSK