SMT JUSTICE T. RAJANI

MACMA.No.1165 of 2011

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the XVI Additional Chief Judge cum II Additional Metropolitan Sessions Judge, Hyderabad in OP.No.299 of 2008, dated 27.12.2010 on the grounds that the Court below did not award adequate compensation; it did not consider the salary of the claimant as Rs.10,000/- per month and the disability as assessed by the doctor at 20%, which is permanent, is not taken into consideration while arriving at the compensation towards loss of future income, based on disability.

2. Heard both sides.

3. A perusal of the judgment of the Court below shows that no discussion was taken up on the aspect of the income of the claimant and no scientific calculation was done based on the disability. It only awarded lump sum amount. However, the amount awarded under the head pain and suffering, medical expenses, transportation charges, extra-nourishment and special damages are found to be adequate.

4. But as regards the income of the claimant, the counsel relied on a decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.[1] wherein the Supreme Court took Rs.6,500/- as the monthly income of a vegetable vendor and Rs.5,000/- as the monthly income of a cleaner.

[1] AIR 2014 SC 1052

5. In this case, the claimant is stated to be a photographer working under P.W.3. The evidence of P.W.3 was also on record to prove the said fact and the cross-examination did not succeed in eliciting any fact, which would discredit the evidence of P.W.3, that the claimant was paid Rs.9,000/- per month. But the Court below did not accept the evidence of P.W.3 considering that there was no record produced by P.W.3. However, following the decision of the Supreme Court in SYED SADIQ's case (1 supra) Rs.6,500/- can be taken as the monthly income of the claimant in this case also and following the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] 40% of the future hike in the income is also to be considered as the claimant is aged 27 years.

6. The loss of monthly income would come to Rs.6,500/- + (Rs.6,500/- x 40% = Rs.2,600/-) = Rs.9,100/-. The disability as stated by P.W.2 is 20%. Though P.W.3 stated that the claimant was removed from job, as the claimant was found not fit, the same does not inspire total confidence, as the evidence of P.W.2 is only that he would not be able to stand for long and he did not state that he was completely disabled to perform the job of photographer. Hence, 20%, as stated by P.W.2, can be taken as the disability affecting the avocation of the claimant. Then, the loss of monthly income, due to disability, would come Rs.9,100/- x 20% = Rs.1,820/- and the loss of annual income would come to Rs.1,820/- x 12 = Rs.21,840/-. The multiplier relevant for the age of the deceased as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT

CORPORATION[2] is '17'. Hence, the loss of future income would come to Rs.21,840/- x 17 = Rs.3,71,280/-. Apart from the above, since no amount is awarded towards loss of future amenities, Rs.15,000/- is awarded under the said head. Hence, in all, the claimant is entitled to total compensation of Rs.3,71,280/- + Rs.15,000/- = Rs.3,86,280/-.

7. Hence, the award of the Court below is modified as indicated above 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 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

December 15, 2017
DSK

[2] (2009) 6 SCC 121