SMT. JUSTICE T.RAJANI

MACMA. No.169 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the order of the I Additional District Judge, Mahabubnagar, passed in O.P. No.496 of 2005 on 22.09.2007 on the grounds that the Court below apportioned 50% of the negligence to the deceased, which is erroneous as it simply relied on the evidence of RW.2, who was the driver of the offending vehicle; the Court below erred in adopting the net salary of the deceased instead of gross salary and arrived at the loss of income.

Heard the learned counsel on either side and perused the material on record.

The evidence, with regard to the negligence, comes through PW.2, who is an eye witness and RW.2, who is driver of the offending van. PW.2 is however, not the complainant. The evidence of PW.2 shows that while he was returning from Mohammadabad he witnessed the accident. The DCM van came from Mahabubnagar side in a rash and negligent manner, at high speed and dashed a Hero Honda motor cycle, on which the deceased was traveling. The DCM van tilted to a side on the road. The cross examination of PW.2 shows that the deceased was coming into the main road from Annareddypally side. The Court below by considering the fact that the deceased was entering into main road from a bylane, held that the deceased also contributed to the accident equally. Even if the evidence of RW.2 is not considered the fact that the deceased was coming from bylane stands glaring from the narration of the manner of the accident made by PW.2 himself. Hence, there seems to be no reason for me to take another view, when the view taken by the Court below is also one of the possible views.

With regard to the quantum of compensation, the grievance of the learned counsel for the appellants is that the Court took the net salary of the deceased for computing the compensation amount whereas gross salary has to be taken. He draws support from a ruling of the Apex Court in ***RAJESH AND ORS. Vs RAJBIR SINGH & ORS.***[1] wherein it was held that in computing future prospects of the victim in case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years there must be an addition of 50% to the actual income of the deceased while computing future prospects and actual income should be the income after paying the tax, if any. Another ruling, which was relied upon is rendered by this Court in ***A.LAKSHMI AND OTHERS Vs. ARJUN ASSOCIATED PVT. LTD. AND ANOTHER***[2] wherein this Court held that professional tax can be deducted from gross salary of the deceased while computing the compensation. In this case, the gross salary of the deceased is stated to be Rs.8,938/-, net salary was shown as Rs.5,519/-. The salary certificate is marked as Ex.A-5. Apart from the deductions made towards GIS, P.T., ZPGPF, LIC, FA, towards A.Bad Bank Loan Rs.2,950/- is also deducted. The net salary was taken after deducting the said deduction, which in my considered opinion is not proper. The deductions that is being made towards the loan cannot be considered as deduction, for the reason that it is not a statutory deduction and it would form part of savings of the employee, as the loan in all probability would be taken for acquiring some asset. Except the professional tax and GIS, which are to the extent of Rs.50/- no other deduction can be allowed from the gross salary of the deceased. Then the net salary of the deceased would be Rs.8,888/-.

The other contention of the learned counsel for the appellants is that the claimants are six in number hence, only 1/4th should be deducted towards personal expenses of the deceased. The said principle,

1 2013 AIAR (Civil) 662
2 2005 ACJ 704

which was laid down by the Supreme Court in ***SARALA VERMA Vs. DELHI TRANSPORT CORPORATION***[3]. Then Rs.2,222/- is the amount that has to be deducted from the salary of the deceased, the Rs.6,666/- would be loss of future income of the claimants. The age of the deceased is stated to be 34 years hence, multiplier relevant for the age of the deceased, which was adopted by the Court below, which is 17, in my opinion, is appropriate. Then, the loss of annual income would be Rs.79,992/- loss of future income would be Rs.13,59,864/-. Hence, the same has to be substituted for Rs.7,50,584/-.

The Court below awarded only Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. The learned counsel for the appellant relies on **Rajesh's** (one supra) case again in support of his contention that Rs.1,00,000/- should be the compensation towards loss of consortium and Rs.25,000/- towards the expenses for funeral. The Supreme Court in the above said case held that loss of consortium not only to the surviving spouse, but loss of love and care and guidance to the children also should be taken care of. It was observed that sum of Rs.25,000/-, Rs.10,000/- and Rs.10,000/- under those heads in the said case, was fixed several decades ago and having regard to the inflation factor same needs to be increased. It took into consideration the ruling in **Sarala Verma** (3rd supra) case wherein it was held that loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. But however, by considering the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations etc., with his or her mate, Rs.1,00,000/- was thought fit to be awarded towards consortium. Going by the said guidelines, substantial amount need to be awarded to the children also towards loss of love and affection. In this case, the claimants 2, 3 and 4 are the children of the

[3] 2009 ACJ 1298 (SC)

deceased they are aged 13, 9 and 1 years, respectively. Hence, award of Rs.50,000/- each to claimants 2 and 3 and Rs.1,00,000/- to claimant No.4 is considered as adequate. The parents were also not awarded any amount towards loss of love and affection hence, Rs.10,000/- each to claimants 5 and 6 is awarded under the head of loss of love and affection. The compensation amount would then come to Rs.17,04,864/- which can be rounded off to Rs.17,05,000/-. After setting off half of the said amount towards negligence of the deceased the compensation amount would be Rs.8,52,500/- apart from Rs.5,000/-, which is awarded towards loss of estate. Then the total amount would be Rs.8,57,500/-. The above amount is substituted for Rs.3,90,000/-, which is payable by respondents 1 and 2 jointly and severally.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Tribunal.

In the result, the appeal is partly allowed with proportionate costs.

JUSTICE T.RAJANI

Date: 15.09.2017
LSK