

SMT JUSTICE T. RAJANI

MACMA No.381 of 2008

JUDGMENT:

This appeal is preferred by the APSRTC, who is respondent No.2 before the tribunal below, assailing the judgment of the Principal District Judge, East Godavari District, Rajahmundry in OP.No.751 of 2004 dated 28.09.2007 on the ground that the tribunal ought to have seen that there is no negligence on the part of the driver of the bus and that the deceased jumped from the moving motor vehicle and fell down on the road and sustained injuries, which led to his death. The tribunal failed to see that the deceased was a pillion rider on the motor cycle driven by PW.2 and PW.2 did not sustain any injuries. The tribunal failed to see that when the deceased was going as a pillion rider on the motor cycle driven by PW.2 and the claim was filed only against APSRTC, the tribunal ought to have dismissed the claim petition for non-joinder of necessary parties. The tribunal erred in taking the monthly income of the deceased at Rs.20,000/-, in the absence of any material, it ought to have taken the notional income of Rs.15,000/-. The tribunal failed to see that the deceased was, admittedly, an agriculturist and at the most the claimants lost the services of the deceased in supervising the lands and in such circumstances, taking of Rs.2,000/- per month is on high side.

2. At the hearing, counsel for the respondents did not appear. The counsel for the appellant fairly concedes that no one was examined from their department to disprove the negligence, which was proved by the evidence of PW.2 and hence, there is no

reason for interfering with the order of the tribunal on the aspect of negligence.

3. With regard to the income taken by the tribunal, the counsel for the appellant argued that deduction of $1/4^{\text{th}}$ or $1/3^{\text{rd}}$, as the case may be, was not made from the income of the deceased and hence, the judgment of the tribunal needs to be modified with regard to loss of future income.

4. A perusal of the judgment of the tribunal shows that the claimants relied upon a decision of the Supreme Court in *STATE OF HARYANA v. JASBIR KAUR* [2003 (2) AJR 168 (SC)] wherein the Supreme Court took Rs.3,000/- per month as the dependency of the petitioners and considering that no material was placed about the type of lands, which the deceased concerned therein possessed and also about his income therefrom and examining those circumstances, the income was taken as Rs.3,000/- and loss of dependency was taken as Rs.2,000/-, which implies $1/3^{\text{rd}}$ income was deducted towards personal expenditure of the deceased. The tribunal seems to have straightaway taken the income arrived at by the Supreme Court, after making the said deduction. Hence, this Court opines that there is no need to interfere with the loss of dependency fixed by the tribunal as Rs.2,000/- per month.

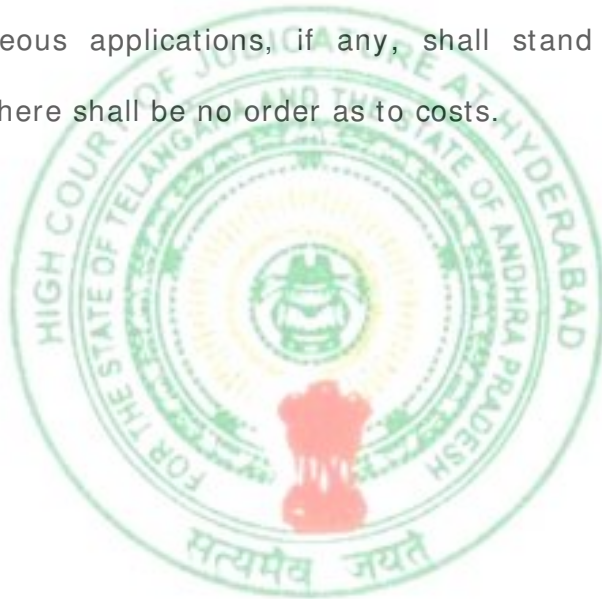
5. Learned counsel for the appellant also contends that the suitable multiplier to be applied is only 17 but the tribunal adopted 18 as the multiplier.

6. It is to be noticed that by the time the tribunal delivered its judgment, the judgment of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹ was not available and hence, going by the multiplier as specified in the second schedule of the Motor Vehicle Act, 1988, the tribunal adopted 18 as the multiplier. There is no ground made out in the appeal with regard to the error in applying the multiplier.

In the above circumstances, this Court opines that there is no reason for interfering with the judgment of the tribunal. Hence, the civil miscellaneous appeal is dismissed. As a sequel, the miscellaneous applications, if any, shall stand disposed of as infructuous. There shall be no order as to costs.

March 17, 2017
DSK

T. RAJANI, J



¹ (2009) 6 SCC 121