SMT JUSTICE T. RAJANI

MACMA.No.1261 of 2008

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.3079 of 2005 dated 18.07.2007, on the grounds that the Court below wrongly came to the conclusion that though as per the income and the relevant multiplier, the compensation comes to Rs.4,71,700/-, as the claimants cannot be called dependants they are not entitled for compensation; the Court below failed to consider that in the absence of class – I heirs, class – II heirs are entitled for compensation.

2. Heard both sides.

3. The counsel for the appellant relies on a decision of the High Court of Gauhati in NEW INDIA ASSURANCE CO. LTD. v. PHELISHA BAKAI[1] in support of her contention that even if the claimants are not dependants of the deceased, they would be entitled to seek compensation by filing a claim petition under Section 166 of the Motor Vehicles Act. The relevant para of the said decision is as follows:

> "266. While considering the present case it is of utmost importance to note that the claimant, being the married daughter of the said deceased, cannot ordinarily be treated to be dependent on the income of her father. However, the claimant, being legal representative of the

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[1] 2007 ACJ 2388

said deceased could have maintained claim under Section 166 seeking compensation for the death of her father …"

4. There cannot be any quarrel on the said proposition. Section 166 permits the legal representatives also to make an application with a claim for compensation. The deceased would be accumulating her savings to the estate, which would naturally devolve on the available legal heirs.

5. In this case, the deceased, is stated to be a Government Teacher, which fact is not disputed. The salary certificate of the deceased is marked before the Court below as Ex.P4. The counsel for the respondent though contends that the salary certificate is not proved by examining the person, who issued the same, does not raise any objection to the assumption that any government teacher would be drawing the salary, as reflected in Ex.P4.

6. The deduction that has to be made from the gross salary is only Rs.20/-, which is deducted towards professional tax, as the other deductions are only savings of the deceased, being GPF, APGLI and GIS. Then the net salary would be Rs.14,977/-. The income tax of Rs.20,000/- deducted by the Court below cannot be sustained, as it is not proved that the income of the deceased is beyond the taxable limits. 1/3rd of Rs.14,977/- has to be deducted towards personal expenditure of the deceased, on which the loss of monthly income would be Rs.9,985/- and the loss of annual income would be Rs.1,19,820/-. The age of the deceased according to the date of birth reflected in Ex.A8, which is the pan card, as 25.08.1950, is 55 years, as on the date of the accident. Hence, the multiplier relevant for her

age as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2] would be '11'. Hence, Rs.1,19,820 x 11 = Rs.13,18,020/- would be the loss of dependency to the claimants.

7. Apart from the above, following the latest Constitution Bench of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017) the compensation under the heads loss of estate and funeral expenses are awarded at Rs.15,000/- each. In all, the claimants are entitled to total compensation of Rs.13,18,020/- + Rs.30,000/- = Rs.13,48,000/- with proportionate costs. In all, the compensation awarded by the Court below is modified as above. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

8. The claimants are daughter and mother-in-law of the deceased. The counsel for the claimants submits that the second claimant has been residing along with the deceased. The counsel for the respondent contends that the deceased has other sons and that the same was observed by the Court below, which need not be differed with. It is submitted that in the same accident, the husband of the deceased also died. In such situation, the second claimant also turns out to be a person without any dependency. The Court below apportioned the compensation equally between the two claimants. Hence, in the same

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[2] (2009) 6 SCC 121

proportion, the compensation can be apportioned between the two claimants.

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

T. RAJANI, J

November , 2017
DSK