SMT JUSTICE T. RAJANI

MACMA.No.475 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the IX Additional District Judge, Visakhapatnam in OP.No.795 of 2009 dated 15.02.2011, on the ground that the compensation awarded by the Court below is inadequate.

2. Heard both sides.

3. The counsel for the claimant, at the hearing, contends that the approach of the Court below was completely erroneous while assessing the compensation under all the heads.

4. The Court below by considering that there was no evidence with regard to the earnings of the deceased concluded that Rs.3,000/-could be awarded and saying so, it held that the claimants can only get Rs.3,000/- but not Rs.3,00,000/-. The Court below also, considering that the claim was under the head of loss of earning power but not under the head loss of earning, held that the claim of Rs.3,00,000/- under that head is very excessive and that the claimants are entitled to only Rs.3,000/- per month. The judgment of the Court below is completely incomprehensible, as there is absolutely no reason for disbelieving the genuineness of the claim at Rs.3,00,000/-. It awarded only Rs.26,000/-. There was absolutely no scientific calculation adopted by the Court below in arriving at the compensation. It awarded only Rs.5,000/- towards transportation

expenses and by considering Ex.A7, which is bunch of medical bills for Rs.15,113/-, it awarded Rs.11,000/- without giving any reasons for not awarding the entire amount under Ex.A7. It awarded Rs.2,000/- towards funeral expenses. Hence, a fresh calculation need to be made with regard to the compensation.

5. Accepting that since there is no evidence adduced with regard to the income of the deceased, Rs.3,000/- can be taken as monthly income of the deceased, after deducting 1/3rd towards personal expenditure of the deceased, the loss of future monthly income to the claimants would be Rs.2,000/- and loss of annual income would be Rs.24,000/-. The age of the deceased is stated to be 45 years and the relevant multiplier for his age as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1] is ‘13’. Hence, Rs.24,000/- x 13 = Rs.3,12,000/- would be the loss of future income. Apart from the above, the claimants would also be entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and the first claimant would be entitled to Rs.40,000/- towards loss of consortium as per the latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017). Apart from the above, the amount under Ex.A7, which is Rs.15,113/-, is also awarded and Rs.5,000/- which was awarded towards transportation expenses is sustained. Thereby, the award comes to Rs.4,02,113/- and the same is restricted to Rs.3,50,000/- as per the claim made by the claimants.

---

[1] (2009) 6 SCC 121

6. The Court below dismissed the petition against respondent No.1 without assigning any reasons. The same cannot be sustained. The liability of respondent No.2 would arise only when respondent No.1 becomes liable and there is absolutely no reason to exonerate respondent No.1. Hence, respondent No.1 also shall be jointly and severally liable. The Court below did not make any apportionment of the compensation. Out of the aforesaid compensation amount, Rs.10,000/- is awarded to each of the claimants 2 and 4 and Rs.30,000/- is awarded to claimant No.3, being the daughter of the deceased and Rs.3,00,000/- is awarded to the first claimant and they are permitted to withdraw their shares.

7. The claimants are entitled to total compensation of Rs.3,50,000/- with proportionate costs. The award shall relate back to the date of decree and the enhanced 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.

____

T. RAJANI, J

November 27, 2017
DSK