* SMT JUSTICE T. RAJANI

+MACMA.No.952 of 2013

% Dated: 19.12.2017

J. Padma and others.

... APPELLANTS

AND

$ D. Satyanarayana and another.

.. RESPONDENT

! Counsel for Appellants : MR. P. RAMAKRISHNA REDDY

^ Counsel for Respondents : --NONE APPEARED--

< GIST :

> HEAD NOTE:

? Cases referred:

1. 2013 ACJ 2512
2. (2009) 6 SCC 121

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MACMA.No.952 of 2013

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the V Additional Metropolitan Magistrate Sessions Judge – cum – XIX Additional Chief Judge, City Criminal Courts, Hyderabad in OP.No.717 of 2009 dated 22.12.2012 on the grounds that the Court below did not award appropriate compensation and failed to see that the deceased in the initial year itself has earned Rs.40,000/- per annum, as reflected in Ex.A4, and his future income would have increased by 3 to 4 folds in future.

2. Heard the counsel for the appellants. None appears for the respondents.

3. The counsel for the appellants contends that apart from being a toddy tapper, the deceased was working as LIC agent and the evidence of P.W.3 would suffice to conclude that the deceased was making very good earnings. The evidence of P.W.3 shows that he was working as a Branch Manager and that the deceased was issued agent licence on 03.03.2008 and he received Rs.40,517/- towards commission for the business done during that period. The counsel for the appellants contends that between March 2008 and November 2008 itself the deceased could get the commission of Rs.40,517/-, which would show that he would, in all probability, earn huge amounts in future. The said fact glares from the evidence of P.W.3 and the same cannot be ignored.

4. The Court below, however, considered the income of the deceased as Rs.15,000/- but, ultimately, fixed the notional income of Rs.4,000/-. There is absolutely no basis on which the Court below arrived at the said amount. The evidence with regard to the deceased taking up the avocation of toddy tapper apart from being LIC agent is, however, not confidence inspiring. The deceased is stated to be a graduate and hence, his avocation as LIC agent cant be believed but his avocation as toddy tapper does not inspire any confidence, much less, in the light of the fact that no cogent evidence was adduced to prove the said fact. However, as already observed, the approach of the Court below in not taking the annual income of Rs.40,000/-, as the income of the deceased is not sustainable. In the first year itself, the deceased could earn Rs.40,517/- and in the near future, he would definitely earn more than the said amount, as the evidence of P.W.3 shows that the deceased had sufficient potential to make such earnings.

5. The counsel for the appellants also relied on a decision of the High Court of Madras in PARAMESWARI v. A. KUMAR[1], which is rendered in respect of the death of LIC agent. The Court took the commission as Rs.25,000/- per month and deducted 15% for income tax and 1/3rd towards personal expenditure. In this case, Rs.40,000/- can be taken as the income of the deceased by ignoring the fraction of Rs.517/-.

6. The counsel also relied on a latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI

[1] 2013 ACJ 2512

[Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] to contend that the future hike in the income is also to be considered and the deceased, being 41 years, the future hike has to be 25% as per the said decision.

7. The income of Rs.40,517/- is only for a period of eight months i.e. March 2008 to November 2008. Since the income of the deceased is stated to be only Rs.40,517/-, he would not be liable for tax, as the income would not exceed taxable limits. If Rs.40,517/- is taken for calculation of the income of the deceased, the monthly income would come to Rs.40,517/- x 1/8 = Rs.5,064/- and the annual income would come to Rs.5,064/- x 12 = Rs.60,768/-. If the future hike at 25% is added, the annual income would come to Rs.60,768/- + (Rs.60,768/- x 25% = Rs.15,192/-) = Rs.75,960/-. Since the claimants are four in number, 1/4th has to be deducted towards his personal expenditure as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2]. Hence, after deducting 1/4th, the income would come to Rs.75,960/- - (Rs.75,960/- x ¼ = Rs.18,990/-) = Rs.56,961/-. The age of the deceased, being 41 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (2 supra) is '14'. Hence, the loss of future income to the claimants would come to Rs.56,961 x 14 = Rs.7,97,454/-. Apart from the above, following the decision of the Supreme Court in PRANAY SETHI's case (supra) Rs.40,000/- is awarded to the first claimant towards loss of consortium, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimants are entitled to total compensation of

[2] (2009) 6 SCC 121

Rs.7,97,454/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.8,67,454/-, which is rounded off to Rs.8,68,000/-.

8. Hence, the award of the Court below is modified as indicated above with proportionate costs. The apportionment of compensation shall be made in the same proportion as made by the Court below. 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.

T. RAJANI, J

December 19, 2017
DSK