SMT JUSTICE T. RAJANI

MACMA.No.4690 of 2008
&
CROSS-OBEJCTIONS (SR).No.34719 of 2010

JUDGMENT:

The appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the III Additional District judge, Tirupati in OP.No.582 of 2005 dated 19.08.2008, on the ground that there was contributory negligence on the part of the deceased and the Court below failed to appreciate the same. The claimants also filed cross-objections assailing the judgment with regard to the inadequacy of compensation.

2. Heard both sides.

3. A perusal of the judgment of the Court below under issue No.1, which deals with the issue of negligence, shows that the evidence of P.W.2, who is an eye-witness was appreciated and negligence was held to be on the part of the driver of the crime vehicle. The evidence of R.W.2, that he saw the light on the right side of the tractor was not glowing, was considered, before arriving at the said conclusion. There is absolutely no reason to differ with the reasoning of the Court below. Hence, the appeal filed by the insurance company has to be dismissed.

4. As regards cross-objections filed by the claimants, the counsel for the cross-objectors points out that though the Court below, in the judgment, held that the gross income of the deceased has to be considered, it took the net income of the deceased and made 1/3rd deduction towards personal expenditure of the deceased. The counsel

also contends that the claimants being four in number, the deduction towards personal expenditure of the deceased has to be $1/4^{th}$ as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[1].

5. The counsel for the appellant relied on a decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [SLP(Civil).No.25590 of 2014 dated 31.10.2017) to contend that 25% would be the future hike for self-employed person. Hence, by considering such a hike, the income of the deceased comes to Rs.1,15,375/- and after deducting $1/4^{th}$, the loss of future income per annum would come to Rs.1,15,375 x ¼ = Rs.86,533/-. The multiplier relevant for the age of the deceased, being 48 years, is '13' as per SARLA VERMA's case (1 supra). Hence, the loss of dependency would come to Rs.86,533 x 13 = Rs.11,24,929/-. As per the decision in PRANAY SETHI's case, Rs.40,000/- should be awarded towards loss of consortium to the first claimant; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Hence, the claimants are entitled to total compensation of Rs.11,94,929/- which is rounded off to Rs.11,95,000/- 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.

6. The counsel for the cross-objectors argued for awarding Rs.1,00,000/- as compensation for the loss of care and guidance to

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[1] (2009) 6 SCC 121

the second claimant but the counsel for the appellant draws the attention of this court to relevant part of the decision in PRANAY SETHI's case wherein it was categorically observed as under:

> "... As far as the conventional heads are concerned, we find it difficult to agree with the view of express in Rajesh. It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- loss of consortium and Rs.1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and guidance does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same ..."

Having said so, the Supreme Court laid down the following figures as the reasonable figures towards loss of estate, loss of consortium and funeral expenses respectively, which are Rs.15,000/-, Rs.40,000/- and Rs.15,000/-.

In the result, the civil miscellaneous appeal is dismissed. The cross-objections are partly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed.

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T. RAJANI, J

November 9, 2017
DSK