SMT.JUSTICE T.RAJANI

MACMA NO.911 of 2008

ORDER :

This appeal is preferred by the appellant, who is the second respondent before the Court below, assailing the judgment of III Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.1228 of 2006, dated 19.09.2007, on the ground that the income of the deceased was taken as Rs.60,000/-, but the claim being, under Section 163 A of the Motor Vehicles Act (for short, 'the Act'), persons with only upto income of Rs.40,000/- can make a claim under Section 163 A of the Act.

2. Heard both the counsel.

3. Counsel for the petitioner agrees for restricting the claim based on the salary of the deceased as Rs.40,000/- per annum, as per the Act. But, however, contends that the multiplier of 18, which is relevant to the age of the deceased, has to be taken.

4. There is no quarrel about the two contentions.

5. With regard to the first contention, the Ruling relied upon by the learned counsel for the appellant, which is reported in *Deepal Girishbai Soni and others Vs. United India Insurance Company Limited, Baroda*[1], is to the effect that if a person invokes provisions of Section 163A, the annual income of Rs.40,000/- per annum shall be treated as a cap., and only those whose annual income is upto

[1] 2004 (5) ALT (11) SC

Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

6. There is no embargo in permission being accredited to the claimants to restrict their claim based on the income of the deceased being Rs.40,000/- per annum.

7. The deceased is an unmarried person. Learned counsel for the respondents contends that 1/3rd has to be the deduction towards the personal expenditure of the deceased as per the Ruling reported in *Jitta Bikshapathi and another Vs. R.Venkat Reddy and another*[2] at para 15.

8. But the Apex Court in *Sarla Verma Vs. Delhi Transport Corporation*[3] has laid down that in case of an unmarried person, 50% has to be deducted towards the personal expenditure of the deceased. Hence, the ruling relied upon by the learned counsel for the respondents does not help him. 50% of the income of the deceased is taken as future loss of income and the rest of the income comes to Rs.20,000/- per annum, multiplier relevant to the age of the deceased who is 22years, is 18 as per Sarla Varma's case. Hence, 20,000 x 18 = Rs.3,60,000/-, would be loss of future income to the claimants. As per Schedule II of the M.V.Act., Rs.5,000/- should be compensation towards the loss of love and affection to each of the parent. Hence, the said amount which comes to Rs.10,000/- is awarded to the respondents/claimants towards loss of love and affection, thereby making total award of Rs.3,70,000/-.

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[2] 2015 (1) ALT 79
[3] 2009 ACJ 1298

9. In the result, the MACMA is partly allowed by modifying the judgment of the lower Court and reducing the award amount to Rs.3,70,000/-. The same shall be apportioned between the claimants as per the proportion laid by the lower Court. There shall be no orders as to the costs.

10. Miscellaneous petitions, if any pending, shall stand closed.

T. RAJANI, J

24.10.2017
vhb